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EXHIBITS

| <u>Doc.<br/>No.</u> | <u>Def.<br/>No.</u> | <u>Pros.<br/>No.</u> | <u>Description</u>  | <u>For<br/>Ident.</u> | <u>In<br/>Evidence</u> |
|---------------------|---------------------|----------------------|---|-----------------------|------------------------|
| 1400-D-4            | 2799                |                      | Letter from Ambassador HORINOUCI to the U.S. Secretary of State dated 6 January 1940                            |                       | 25153                  |
|                     | 2800                |                      | Book entitled "Peace and War", an official publication of the Department of State, USA                          |                       | 25168                  |
| 401(39)             | 2800-A              |                      | Excerpt therefrom - Instructions to Ambassador Grew   |                       | 25168                  |
|                     |                     |                      | <u>MORNING RECESS</u>   |                       | 25180                  |
| 1400-F-4            | 2801                |                      | Proclamation No. 2413 signed by President Roosevelt 2 July 1940   |                       | 25181                  |
| 1400-G-4            | 2801-A              |                      | Press Release issued by the White House on 2 July 1940 re HR Bill 9850 signed by President Roosevelt            |                       | 25192                  |
| 1400-H-4            | 2801-B              |                      | Proclamation No. 2417 signed by President Roosevelt 26 July 1940  |                       | 25193                  |
| 1400-I-4            | 2801-C              |                      | Regulation signed by President Roosevelt 26 July 1940 re Petroleum Products, Tetraethyl lead and Iron and Steel |                       | 25193                  |

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|---------------------------|---------------------------|----------------------------|---|-----------------------------|------------------------------|
|                           |                           |                            | <u>NOON RECESS</u>  |                             | 25196                        |
| 1924                      | 2802                      |                            | Affidavit of UEMURA,<br>Kogoro  |                             | 25198                        |
| 1400-L-4                  | 2803                      |                            | Proclamation No. 2423<br>signed by President<br>Roosevelt 12 September<br>1940                                |                             | 25219                        |
| 1400-N-4                  | 2804                      |                            | Press Release issued by<br>the White House on 26<br>September 1940  |                             | 25222                        |
| 1400-O-4                  | 2805                      |                            | Regulation signed by<br>President Roosevelt<br>30 September 1940<br>defining use of "iron<br>and steel scrap" |                             | 25222                        |
| 1400-R-4                  | 2806                      |                            | Press Release issued by<br>the White House on 15<br>October 1940  |                             | 25227                        |
| 1400-W-4                  | 2807                      |                            | Executive Order No. 8607<br>signed by President<br>Roosevelt 10 December<br>1940                              |                             | 25233                        |
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|---------------------|---------------------|----------------------|--|-----------------------|------------------------|
| 1400-Y-4            | 2808                |                      | Proclamation No. 2451<br>signed by President<br>Roosevelt 20 December<br>1940    |                       | 25240                  |
| 1400-B-5            | 2809                |                      | Executive Order No. 8631<br>signed by President<br>Roosevelt 10 January<br>1941  |                       | 25250                  |
| 1400-C-5            | 2810                |                      | Executive Order No. 8668<br>signed by President<br>Roosevelt 4 February<br>1941  |                       | 25251                  |
| 1400-D-5            | 2811                |                      | Executive Order No. 8669<br>signed by President<br>Roosevelt 4 February<br>1941  |                       | 25252                  |
| 1400-E-5            | 2812                |                      | Executive Order No. 8693<br>signed by President<br>Roosevelt 25 February<br>1941 |                       | 25253                  |
| 1400-F-5            | 2813                |                      | Executive Order No. 8694<br>signed by President<br>Roosevelt 25 February<br>1941 |                       | 25254                  |
| 1400-G-5            | 2814                |                      | Executive Order No. 8702<br>signed by President<br>Roosevelt 4 March 1941        |                       | 25255                  |

Thursday, 7 August 1947

INTERNATIONAL MILITARY TRIBUNAL  
FOR THE FAR EAST  
Court House of the Tribunal  
War Ministry Building  
Tokyo, Japan

The Tribunal met, pursuant to adjournment,  
at 0930.

Appearances:

For the Tribunal, all Members sitting, with  
the exception of: HONORABLE JUSTICE STUART McDOUGALL,  
Member from the Dominion of Canada; HONORABLE JUSTICE  
I. M. ZARAYANOV, Member from the USSR; and HONORABLE  
JUSTICE E. H. NORTHCROFT, Member from the Dominion of  
New Zealand, not sitting from 0930 to 1600.

For the Prosecution Section, same as before.

For the Defense Section, same as before.

(English to Japanese and Japanese  
to English interpretation was made by the  
Language Section, IMTFE.)

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1 MARSHAL OF THE COURT: The International  
2 Military Tribunal for the Far East is now in session.

3 THE PRESIDENT: Mr. Logan.

4 MR. LOGAN: If the Tribunal please, we now  
5 offer in evidence defense document 1400-D-4, a letter  
6 from Ambassador HORINOUCI to the Secretary of State  
7 dated January 6, 1940.

8 THE PRESIDENT: Brigadier Quilliam.

9 BRIGADIER QUILLIAM: May it please the  
10 Tribunal, in our submission this is merely another  
11 embargo document, this time taking the form of a  
12 protest by the Japanese against America's embargoes.  
13 We suggest that this is irrelevant, as the documents  
14 that were excluded yesterday.

15 THE PRESIDENT: Perhaps, this ought to go in  
16 as part of the negotiations, as part of the evidence  
17 of the negotiations.

18 BRIGADIER QUILLIAM: May it please the  
19 Tribunal, if the Tribunal takes that view we do not  
20 press the objection.

21 THE PRESIDENT: The document is admitted on  
22 the usual terms.

23 CLERK OF THE COURT: Defense document 1400-D-  
24 will receive exhibit No. 2799.  
25

(Whereupon, the document above

1 referred to was marked defense exhibit  
2 No. 2799 and received in evidence.)

3 MR. LOGAN: We now read exhibit 2799,  
4 being a letter from the Japanese Ambassador,  
5 HORINOUCHI, to the Secretary of State, Washington,  
6 January 6, 1940.

7 "Sir: I have the honor to state that, as  
8 the result of a communication through a circular  
9 letter of July 1, 1938, addressed by the Department  
10 of State to manufacturers and exporters of aircraft  
11 and aircraft parts, in which it was mentioned that  
12 'the Department of State would with great regret  
13 issue any licenses authorizing exportation, direct  
14 or indirect, of any aircraft, aircraft armament,  
15 aircraft engines, aircraft parts, aircraft accessories,  
16 serial bombs or torpedoes to countries the armed  
17 forces of which are making use of airplanes for attack  
18 upon civilian populations,' it has virtually become  
19 impossible for Japanese firms to import any airplanes  
20 and airplane parts of American make.

21 "As repeatedly stated by my Government,  
22 military operations of the Japanese air forces in  
23 China have been directed solely against warlike  
24 organizations and establishments of the Chinese. No  
25 bombing or machine-gunning has been resorted to against

1 civilian population as such. The Japanese Government,  
2 therefore, cannot but take exception to any treatment  
3 of Japan as a country 'the armed forces of which are  
4 making use of airplanes for attack upon civilian  
5 population.'

6 "The above-mentioned measures employed by  
7 the Department of State, which, in view of the great  
8 influence that can be wielded by a central government  
9 upon private manufacturers and exporters, have the  
10 effect of a discriminatory export embargo. My Govern-  
11 ment considers that such measures applied to Japan  
12 are in derogation of the provision of Article V,  
13 paragraph 3 of the Treaty of Commerce and Navigation  
14 between Japan and the United States of February 21,  
15 1911, and at variance with the general purposes of the  
16 Treaty as a whole.

17 "While my Government was keenly alive to the  
18 unfortunate consequences of the said communication to  
19 American exporters, it did not relinquish the hope  
20 that the United States Government, in harmony with  
21 its fair and just trade policy, would before long  
22 retract it.  
23

24 "However, on December 16, 1939, another  
25 letter was addressed by the Department of State to  
manufacturers and exporters to the effect that the

1 Department hoped that it would not receive any  
2 application for a license to authorize the exporta-  
3 tion, direct or indirect, of articles enumerated in  
4 the letter of July 1, 1938, and, in addition thereto,  
5 of aeronautical equipment of all kind and materials  
6 essential to airplane manufacture. In order to point  
7 out that molybdenum and aluminum should be included  
8 among such materials, a letter was addressed by the  
9 Department to all producers of these two materials.

10 "Still further, it was announced on  
11 December 20, 1939, from the Department of State that  
12 the decision had been reached that there should be no  
13 further delivery to certain countries of plans, plants,  
14 manufacturing rights, or technical information re-  
15 quired for the production of high quality aviation  
16 gasoline and that this decision has been communicated  
17 to the interested American oil companies. The an-  
18 nouncement cited the decision as an extension of the  
19 United States Government's policy in regard to the  
20 sale of airplane, aeronautical equipment, and materials  
21 essential to airplane manufacture to countries the  
22 armed forces of which were engaged in unprovoked  
23 bombing or machine-gunning of civilian populations  
24 from the air.

25 "Of late there occurred a number of cases

1 in which the purchase of certain articles and materials  
2 under negotiation between Japanese firms and interested  
3 American companies has been rendered impossible as the  
4 result of the Department of State's letters.

5 "To cite one of the most outstanding cases,  
6 a memorandum of a contract was drawn and initialed  
7 August 19, 1938, by representatives of Japan Gasoline  
8 Company on the one part and Universal Oil Products  
9 Company on the other.

10 "It was stipulated that Universal Oil Pro-  
11 ducts Company, which since 1928 had maintained close  
12 business connection with Japan Gasoline Company, should  
13 grant a license in Japan covering their polymerization  
14 processes for the production of iso-octanes and rights  
15 under all of their processes in the entire petroleum  
16 field, in return for which Japan Gasoline Company  
17 should pay \$1,000,000 United States funds to Universal  
18 Oil Products Company.

19 "It was understood that, during the progress  
20 of the negotiations in connection with the above  
21 agreement, the representatives of Universal Oil Products  
22 Company approached and laid the pertinent facts before  
23 the Department of State, which made no objection to the  
24 transaction.  
25

"Under the terms of the agreement Japan

1 Gasoline Company paid to Universal Oil Products  
2 Company a sum of \$300,000 on October 30, 1938, and  
3 \$400,000 on July 8, 1939. It was agreed that further  
4 payment of \$100,000 was to be made at the time of  
5 delivery of plans and specifications for a plant and  
6 a final payment of \$200,000 upon completion and test  
7 of such a plant. In essence, Universal Oil Products  
8 Company was bound to guarantee, within the limit of  
9 the money it was to receive in payment, complete  
10 working of the plant in Japan under polymerization  
11 processes.

12 "Recently Universal Oil Products Company  
13 proposed that a final agreement should be made along  
14 the lines of the provisional agreement, and accordingly  
15 the two parties continued their negotiations.

16 "On December 19, 1939, however, Universal Oil  
17 Products Company informed the representatives of  
18 Japan Gasoline Company that they had received a letter  
19 from the Department of State which left no alternative  
20 for them but to withhold further fulfillment of the  
21 terms of the contract.

22 "The consummation of this contract, under  
23 which the greater part of the payment involved has  
24 already been made and other obligations required have  
25 been completely fulfilled by one of the parties, has for

1 all practical purposes been frustrated.

2 "Entertaining the belief that steps taken  
3 by your Government, causing a situation not dis-  
4 similar in effect to that which might obtain under  
5 an export embargo discriminating against Japan, are  
6 in contravention to the provisions of Article V,  
7 paragraph 3, of the Treaty of Commerce and Navigation  
8 between Japan and the United States and at variance  
9 with the spirit of the Treaty as a whole and fearing  
10 that the continuation of such measures may affect  
11 the present earnest efforts of Japan and the United  
12 States for the improvement of mutual friendly re-  
13 lations through the maintenance and promotion of  
14 commerce between the two countries, my Government  
15 greatly deplors the herein referred to actions of  
16 the authorities of the United States Government.

17 "I avail myself (etc.)

18 "Kensuke HORINOCHI."  
19  
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We offer in evidence defense document  
1 1400-U-2 being an excerpt from a telegram dated  
2 March 24, 1940, from Ambassador Grew to Secretary of  
3 State Hull, dealing with the problem of embargoes,  
4 loans to China, and reporting in part speech by the  
5 Prime Minister of Japan and the Foreign Minister.

6 THE PRESIDENT: Brigadier Quilliam.

7 BRIGADIER QUILLIAM: May it please the  
8 Tribunal, we object to this document which is concerned  
9 with the embargo question. It reports the press report  
10 of certain discussions in the Diet with reference to  
11 that question, and in our submission does not assist  
12 the determination of the issues.

13 THE PRESIDENT: This is how the Japanese  
14 put their viewpoint to one another. What they said to  
15 the Americans is in quite a different class.

16 MR. LOGAN: This shows the Japanese point of  
17 view on the effect of the embargoes, if the Tribunal  
18 please, and it is an official telegram which was sent  
19 by Mr. Grew to the United States Secretary of State;  
20 and its materiality is to disprove the allegations of  
21 the claims of the prosecution that Japan was building  
22 up an industrial plan for aggressive war. All this  
23 evidence goes to that point, to show that she wasn't  
24 able to get the material as claimed by the prosecution;  
25

1 not only goods for military purposes but civilian goods  
2 as well.

3 THE PRESIDENT: Mr. Logan, anything worth-  
4 while, any point worthwhile, was made in the course  
5 of the negotiations by the Japanese with the Americans.

6 You see, otherwise, where do we finish if  
7 we let in all these things said by the Japanese to  
8 one another? We should have all the negotiations, and  
9 every point worthwhile was made in the course of them.

10 MR. LOGAN: But this goes a step further, if  
11 the Tribunal please. We have in this case a charge  
12 of conspiracy, and here is a statement made by the  
13 Prime Minister in the Lower House; and the question  
14 which this Tribunal will have to decide is, did these  
15 accused know the situation as reported to them by the  
16 officials of their government, what did they believe,  
17 and what did they do as a result of it?

18 THE PRESIDENT: This subdivision is called,  
19 "Allied Pressure against Japan."

20 MR. LOGAN: That is right.

21 THE PRESIDENT: And what you are endeavoring  
22 to establish is the fact that there was allied  
23 pressure. For that purpose, isn't it enough to tell  
24 us all you said to the Americans?  
25

MR. LOGAN: No. That comes under two points.

1 One is the pressure which was applied, and I think  
2 later documents will show that it was admitted that  
3 there was pressure applied. I do not think there is  
4 any question about that.

5 And the other two points in addition to that  
6 pressure are, one, that Japan was not able to get  
7 the materials to build up a war machine or for civil-  
8 lian economy. Of course, the prosecution have claimed  
9 that in their opening statement of that particular  
10 phase of the case.

11 THE PRESIDENT: Who was the Prime Minister  
12 and who was the Foreign Minister on the 24th of  
13 March, 1940?

14 MR. LOGAN: YONAI.

15 THE PRESIDENT: He is not charged with  
16 conspiracy.

17 MR. LOGAN: We assume he isn't, your Honor,  
18 although we do not know on account of that divers  
19 other persons allegation in the Indictment. We don't  
20 know who is or who isn't. But that, I think, is  
21 beside the point.

22 THE PRESIDENT: He is alive in Japan, I  
23 understand, and if they thought he was guilty they  
24 would charge him.

25 MR. LOGAN: But the third point I wished to

1 make was that here is a statement by the Prime Minister  
2 and, say, where there is a charge of conspiracy and  
3 the information was given to Japan through the respon-  
4 sible official, the Prime Minister, what did these  
5 accused think of this information? Did they conspire  
6 after they heard it?

7 THE PRESIDENT: We have repeatedly told you,  
8 Mr. Logan, or told the defense, that you can raise  
9 that on the individual cases. What each individual is  
10 influenced by is a matter to be dealt with in the  
11 individual case.

12 MR. LOGAN: That is one of the three points.  
13 But with respect to that, here is the statement that  
14 was made. There would be no question of that when  
15 it comes to the individual case. They can refer back  
16 to this statement that was made by the Prime Minister  
17 and the Foreign Minister.

18 THE PRESIDENT: We will wait until the  
19 individual case comes before we decide what influenced  
20 them.

21 By a majority, the objection is upheld and  
22 the document rejected.

23 MR. LOGAN: I now offer in evidence defense  
24 document 220. This was processed for the defense,  
25 BR. 133A, by the prosecution out of some of the

1 excerpts which the prosecution introduced into  
2 evidence.

3 THE PRESIDENT: Mr. Comyns Carr.

4 MR. COMYNS CARR: May it please the Tribunal,  
5 it is quite true that Foreign Relations Volume II is  
6 an exhibit as a whole. But in our submission this  
7 excerpt from it is irrelevant. It adds nothing to  
8 what we know already, namely, that at this stage,  
9 April 1940, all parties were agreed that the war in  
10 Europe should not interfere with the status of the  
11 Netherlands East Indies.

12 MR. LOGAN: The Tribunal will recall that  
13 when the prosecution was presenting its case, appli-  
14 cation was made by them to present excerpts, and at  
15 that time we were given permission to have the excerpts  
16 which the prosecution omitted processed by the prosecu-  
17 tion for the defense. We were told at that time that  
18 we could read into the record when our time came the  
19 parts that the prosecution omitted to make a complete  
20 story.

21  
22 THE PRESIDENT: What bearing has it on this  
23 phase, Mr. Logan?

24 MR. LOGAN: It has this bearing, that at that  
25 time Japan was trading with Netherlands East Indies  
and they were endeavoring to get oil from then, which

1 we will show later in negotiations that were made at  
2 that time, and prosecution also introduced evidence  
3 with respect to those oil negotiations.

4 THE PRESIDENT: We can't see where it suggests  
5 any pressure on Japan.

6 MR. LOGAN: As I said, your Honor, not only  
7 is this evidence offered with respect to pressure on  
8 Japan, but it is also offered with respect to the  
9 efforts made by the Japanese to get civilian goods  
10 and materials as well as what the prosecution calls  
11 war materials to build up a war machine. Now, if  
12 they could not get the materials, they certainly  
13 could not build up a war machine for aggressive war.

14 THE PRESIDENT: The Tribunal upholds the  
15 objection and rejects the document.

16 MR. LOGAN: Defense document 401-39. This  
17 is an excerpt from "Peace and War" which sets forth  
18 instructions to Ambassador Grew from Secretary Hull,  
19 and admitting that economic pressure had been exerted  
20 on Japan for a year and that everything was being  
21 done by the United States short of a risk of military  
22 hostilities. This is set forth in defense document  
23 401-39, now offered in evidence.

24 THE PRESIDENT: Brigadier Quilliam.

25 BRIGADIER QUILLIAM: May it please the

1 Tribunal, we object to the admission of this document.  
2 It is not part of the negotiations. It is merely a  
3 justification by the United States of its own policy.  
4 It contains nothing new, it throws no fresh light  
5 on anything, and, we suggest, is of no assistance  
6 whatever to the Tribunal.

7 THE PRESIDENT: Mr. Logan.

8 MR. LOGAN: It certainly comes right under  
9 the heading of what we are trying to prove and the  
10 Secretary admits that the United States had been  
11 exerting economic pressure on Japan for a year.

12 BRIGADIER QUILLIAM: May it please the Tribunal,  
13 may I be permitted to say that there can be no dispute  
14 that America did impose certain embargoes. That was  
15 part of the prosecution case.

16 THE PRESIDENT: Well, that would save a lot  
17 of argument and evidence. We realize that. The  
18 embargoes and the freezing of assets could have no  
19 other purpose.

20 MR. LOGAN: Of course, there is no evidence  
21 in the case yet, your Honor, as to the extent and the  
22 effect of those embargoes on Japan. Throughout the  
23 Indictment the prosecution always talks about the  
24 acts of Japan.  
25

THE PRESIDENT: There is no doubt, really, as

to their extent.

1           MR. LOGAN: Well, there is no evidence as to  
2 the extent and the effect. In other words, all we  
3 have is a situation where an allegation is made against  
4 Japan that she was building up a war machine. That is  
5 prosecution's claim. We are trying to show, in this  
6 division, that Japan could not get those materials  
7 which they claim we did get. Somehow or other this is  
8 one of the avenues through which they might have gotten  
9 them, through the United States, one of their biggest  
10 exporters. They didn't get them. That is one point.  
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1 THE PRESIDENT: Perhaps you would be satis-  
2 fied with the second paragraph, if it is admitted.

3 MR. LOGAN: Well, that contains the most  
4 important part of it, of course.

5 THE PRESIDENT: Yes. Well, the objection is  
6 overruled, and the document is admitted as to the  
7 second paragraph only.

8 CLERK OF THE COURT: The book entitled,  
9 "Peace and War, an official publication of the De-  
10 partment of State, United States of America, will  
11 receive exhibit No. 2800 for identification only,  
12 and the excerpt therefrom, bearing defense document  
13 No. 401-39, will receive exhibit No. 2800-A.

14 (Whereupon, the document above  
15 referred to was marked defense exhibit  
16 No. 2800 for identification only; the  
17 excerpt therefrom being marked defense  
18 exhibit No. 2800-A and received in evi-  
19 dence.)

20 MR. LOGAN: I now read exhibit 2800-A,  
21 Instructions to Ambassador Grew, the second para-  
22 graph:  
23

24 "On June 28, 1940 the Secretary of State  
25 discussed the Far Eastern situation with the British  
Ambassador and the Australian Minister. In discussing

1 possible steps to oppose Japanese aggression in the  
2 Far East, the Secretary declared that the United States  
3 had been exerting economic pressure on Japan for a year;  
4 that the United States Fleet was stationed in the  
5 Pacific; and that everything possible was being done  
6 'short of serious risk of actual military hostilities'  
7 to keep the Japanese situation stabilized. This  
8 course, he added, was the best evidence of the inten-  
9 tions of the United States in the future."

10 THE PRESIDENT: Do you want any more?

11 MR. LOGAN: I think this is also material, your Honor.

12 "In regard to a possible settlement between  
13 Japan and China, he set forth two points; first, that  
14 for such a settlement the principles underlying Japa-  
15 nese policy would have to be negatived or at least  
16 seriously modified; second, that properties or  
17 interests of China must not be offered to Japan, or  
18 in other words that peace must not be made with Japan  
19 at the expense of China or of the principles of inter-  
20 national policy to which the United States was com-  
21 mitted."

22 We offer in evidence defense document 1400-V-2  
23 being a report from Ambassador Grew to Secretary Hull  
24 dated June 4, 1940, being a summary of a press report  
25 of an address by the Japanese Minister of Foreign

1 Affairs at the Pacific Society with respect to the  
2 Netherlands East Indies trade.

3 THE PRESIDENT: Mr. Comyns Carr.

4 MR. COMYNS CARR: May it please the Tribunal,  
5 in our submission this document is merely a summary  
6 of a press report of a speech by Foreign Minister  
7 ARITA. It contains nothing whatever which can be of  
8 the slightest assistance to the Tribunal in this case.

9 MR. LOGAN: If the Tribunal please, this  
10 shows the policy of Japan toward the Netherlands  
11 East Indies at that time for maintaining the status  
12 quo in that region.

13 THE PRESIDENT: By a majority, the Court  
14 upholds the objection and rejects the document.

15 MR. LOGAN: We offer in evidence defense  
16 document 1400-F-4, being a proclamation signed by  
17 President Roosevelt on July 2, 1940. This is a  
18 proclamation prohibiting the export of certain art-  
19 icles and materials unless licenses are obtained.

20 THE PRESIDENT: Brigadier Quilliam.

21 BRIGADIER QUILLIAM: May it please the Tri-  
22 bunal, this is the first of a very large number of  
23 similar documents. They deal with the various  
24 proclamations issued by the United States Government  
25 in connection with the export and import of goods.

1 That they are authoritative, genuine documents we can  
2 not dispute. As I have already said, we cannot dis-  
3 pute that an embargo was placed on exports and imports.  
4 We suggest that the putting into evidence of these  
5 documents containing the details of the goods affected  
6 by the embargoes is a waste of time and effort. We  
7 also suggest that if this is considered to be in any  
8 way material or of assistance to the Tribunal, the  
9 proper method would have been to have submitted an  
10 admission or stipulation covering, in a few sentences,  
11 the whole of these documents.

12 THE PRESIDENT: Well, this document is re-  
13 stricted to war materials -- it is called "strategic  
14 commodities" in some places -- and includes all or  
15 practically all such materials. That is conceded,  
16 I suppose, Brigadier, including steel and wool?

17 BRIGADIER QUILLIAM: I was going to ask per-  
18 mission to add, if it please the Tribunal, that it is  
19 shown at the commencement of this document the powers  
20 exercised for the purposes of national defense.

21 THE PRESIDENT: Well, if you admit all that,  
22 there is no need for this document, although we under-  
23 stand you to be conceding its relevancy.

24 BRIGADIER QUILLIAM: May it please the Tri-  
25 bunal, in answer to your question, we certainly

1 challenge the relevancy of it.

2 THE PRESIDENT: Well, we are always prepared  
3 to judicially notice proclamations by the American  
4 President.

5 MR. LOGAN: Does that include the articles  
6 covered by each proclamation?

7 THE PRESIDENT: That is part of the pro-  
8 clamation which we would judicially notice.

9 MR. LDGAN: Well, I would be willing to  
10 accept that, your Honor, if the transcript would show  
11 each of these articles. My reason for that is this,  
12 that Liebert in his testimony has set forth practic-  
13 ally all of the same articles covered in all of these  
14 proclamations of the President and showing the vital  
15 necessity of all these articles for what he called  
16 "war purposes." Now, this is the evidence that --

17 THE PRESIDENT: All I can say is this:  
18 we are going to judicially notice all proclamations  
19 by the President of the United States, and in your  
20 summation you can treat them as part of the evidence  
21 and refer to them. In that way, you will get into  
22 the transcript, as part of your address, whatever  
23 you think should be in it, but for the time being  
24 we want to keep all of this out of the transcript.  
25 It takes too much time.

1 MR. LOGAN: I therefore ask the Tribunal to  
2 take judicial notice of the proclamation No. 2413,  
3 signed by President Roosevelt on July 2, 1940, and  
4 all the materials and products contained therein.

5 THE PRESIDENT: We have judicially noticed  
6 all the proclamations imposing embargoes. You need  
7 not refer to them again until in the course of your  
8 summation.

9 MR. LOGAN: May we have the defense docu-  
10 ment numbers and dates of each one of these pro-  
11 clamations set forth -- a list of those prepared and  
12 set forth in full in the transcript? We can read it  
13 perhaps from the lectern tomorrow.

14 THE PRESIDENT: I do not think there will  
15 be any objection if you can put them in some commod-  
16 ious form. I do not think it is necessary to itemize  
17 every figure.

18 MR. LOGAN: Well, we will prepare such a list,  
19 your Honor.

20 If the Tribunal please, it might be better,  
21 in a chronological order, to refer to each one of  
22 these briefly, the defense document number and the  
23 date of the proclamation, as we go along here.

24 THE PRESIDENT: Yes. You could hand in those  
25 proclamations to the Judges. Some of them may want

1 to read them before you refer to them later in your  
2 summation.

3 MR. LOGAN: That last proclamation is set  
4 forth in defense document No. 1400-F-4.

5 Defense document 1400-G-4 is offered in  
6 evidence. This is a press release issued by the  
7 White House on July 2, 1940, on the license pro-  
8 clamation --it refers back to defense document  
9 1400-F-4, which was just mentioned -- and advising  
10 that the Minister of Export Control has been desig-  
11 nated to administer the provisions of the afore-  
12 said law. We do not intend to read any part of  
13 that.  
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1 THE PRESIDENT: Yes, Brigadier.

2 BRIGADIER QUILLIAM: May it please the  
3 Tribunal, our object was to endeavor to save time  
4 and labor. If my friend is going to read what  
5 he is -- make statements such as he just made with  
6 respect to every document, a great deal of time will  
7 wasted.

8 THE PRESIDENT: This is a military order,  
9 but the Tribunal may consider taking judicial notice  
10 of all orders and proclamations under the hand of  
11 the President.

12 MR. LOGAN: Yes, I asked your Honor to  
13 take judicial notice of that. I didn't intend to  
14 read any part of it.

15 THE PRESIDENT: Well, Mr. Logan, you  
16 understand that although we are prepared to  
17 judicially notice the document it does not follow  
18 that we will receive it in evidence. Under the  
19 statutes in our own countries certain documents may  
20 be judicially noticed, documents signed by a Prime  
21 Minister or Minister among other things. It does  
22 not follow they are always in evidence. They are  
23 only in evidence so far as the court decides they are...  
24 relevant.

25 MR. LOGAN: Well, I don't want to make any

1 mistake about this, your Honor, because I am just  
2 presenting this evidence on behalf of the defense  
3 here at this particular moment.

4 THE PRESIDENT: If I were trying a case in  
5 Australia, these proclamations by, say, the Governor-  
6 General of Australia, would be judicially noticed.  
7 They would not be tendered in evidence. They would  
8 only be referred to; in fact, anything signed by the  
9 Governor-General or the Minister of the Crown. I  
10 thought we might apply that here. Although an  
11 international court is not bound to do it, we might  
12 well do that in the case of the President of a country,  
13 head of a country represented on this Court. That would  
14 shorten the proceedings tremendously. I don't know  
15 why we shouldn't do it.

16 MR. LOGAN: Of course, that judicial notice  
17 practice in the United States is practically the same  
18 as what you have just mentioned and the effect of it  
19 is to avoid the necessity of proving the genuineness  
20 of the document. And, as far as its materiality and  
21 relevancy is concerned the rules are practically the  
22 same. I want to understand just exactly what we are  
23 doing here. If the Court will take judicial notice  
24 that on such a date the President issued an order  
25 and that it was included in this order these various

commodities, if they will accept that as being  
1 relevant to the case, that is what I would like to  
2 have.

3 I might state that in so far as the materials  
4 mentioned in all these proclamations that Mr. Liebert  
5 spent 3 days on his direct testimony alone covering  
6 practically all these materials, showing the great  
7 necessity for them in building up a war machine.  
8 This evidence shows we couldn't get them.

9 THE PRESIDENT: Perhaps we should all  
10 know in the course of the Trial and before the summations  
11 just what we are going to apply of those documents  
12 which we can judicially notice.

13 MR. LOGAN: That is why I say I don't want  
14 to be under any misapprehension as to exactly what  
15 we are doing here.

16 THE PRESIDENT: You can tell us by numbers  
17 or by handing in copies of the documents upon which  
18 you intend to rely and which we are prepared to  
19 judicially notice if relevant and material. They  
20 won't go into the transcript, except the numbers of  
21 them, except the description of them. That refers  
22 to the proclamations and orders of the President  
23 imposing embargoes. We want a record of them at the  
24 proper time, now, in the course of the proceedings,  
25

1 but we do not want them in the transcript. It  
2 takes too much time and too much labor. All you  
3 have to say as you go along, Mr. Logan, "We invite  
4 the Tribunal to take judicial notice of the following  
5 document, being --" Just describe them very shortly.

6 MR. LOGAN: Yes, I will be glad to do it.  
7 It will only take a few lines.

8 We ask the Tribunal to take judicial notice  
9 of the release signed by Franklin D. Roosevelt,  
10 Commander-in-Chief, on July 2, 1940, being contained  
11 in defense document 1400-G-4, showing that the Minister  
12 of Export Control has been designated to administer  
13 the provisions of the license law of July 2, 1940.

14 With respect to defense document 1400-I-4 --  
15 I am sorry, I skipped 1400-H-4 -- We ask the Tribunal  
16 to take judicial notice of the fact that on July 6, 1940  
17 further proclamation No. 2417 was signed by President  
18 Roosevelt, stating that certain other materials have  
19 been added to the list requiring licenses for exportation  
20 and the document sets forth the list of those materials.  
21 This is contained in defense document 1400-H-4.

22 We ask the Tribunal to take judicial notice  
23 of the regulations, dated July 26, 1940, covering  
24 the exportation of articles designated in President  
25 Roosevelt's proclamation of July 2, 1940. These

1 regulations define the terms used in the  
2 proclamation of July 26, 1940 as are set forth  
3 in defense document 1400-I-4.

4 If the Tribunal please, I don't know whether  
5 this is going to work or not. The accused don't  
6 know the terms mentioned in this document.

7 THE PRESIDENT: We are discussing that,  
8 Mr. Logan. We are determined to shorten the matter,  
9 but, just in what way, is the question we have to  
10 decide.

11 It seems to be now about the details of  
12 embargoes which are admitted to have existed, which  
13 have been proved by the prosecution evidence and  
14 about matters which are referred to by Liebert, and  
15 it may be that when you complete tendering all these  
16 proclamations and orders relating to embargoes we  
17 will admit them as one exhibit. But, they are not  
18 going to be read into the transcript. There is clear  
19 determination about that. I think the position may  
20 be put this way. You can think over it during the  
21 recess.

22 MR. LOGAN: We may have a suggestion, your  
23 Honor.

24 THE PRESIDENT: I will put it this way to  
25 you: The prosecution have given evidence of these

1 embargoes, but, you say, not of the extent of the  
2 embargoes. Now you are giving the evidence of their  
3 extent. We assist you by judicially noticing the  
4 President's proclamations and orders, but these  
5 proclamations and orders should be marked in some  
6 way, and I suggest as exhibits. They could be marked  
7 as one exhibit with letters, but we are determined  
8 they won't be read. Your position is fully protected  
9 because it will be in the transcript as numbers, as  
10 exhibit numbers. Think it over, Mr. Logan.

11 We will recess for fifteen minutes.

12 (Whereupon, at 1045, a recess was  
13 taken until 1110, after which the proceedings  
14 were resumed as follows:)

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1 MARSHAL OF THE COURT: The International  
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Mr. Logan.

4 MR. LOGAN: My suggestion is that each one  
5 of these documents be given an exhibit number and that  
6 we ask the Court to take judicial notice of the fact  
7 that the orders or proclamations were signed by the  
8 President on that date and that they cover the follow-  
9 ing materials, and then read the materials. I think  
10 that would shorten it considerably.

11 THE PRESIDENT: We have that list, but it is  
12 too long.

13 MR. LOGAN: I might say I do not intend to  
14 read every item. Where they are classified as a  
15 group -- for example, chemicals or irons -- I will  
16 just read the title without going into which type of  
17 iron or which type of chemicals.

18 THE PRESIDENT: We will try it for one  
19 document and see how it works.

20 MR. LOGAN: We will get back to the first  
21 one, 1400-F-4. We ask that document 1400-F-4 be  
22 given an exhibit number.

23 CLERK OF THE COURT: Defense document 1400-F-4  
24 will receive exhibit number 2801.

25 (Whereupon, the document above referred

1 to was marked defense exhibit No. 2801 and re-  
2 ceived in evidence.)

3 BRIGADIER QUILLIAM: May it please the  
4 Tribunal, we understand that the question of rele-  
5 vancy is in no way being determined in what we are  
6 now discussing -- that that is left open.

7 THE PRESIDENT: I am afraid we must give  
8 our decision on that as we proceed. Otherwise we  
9 would have to concede what the defense frequently  
10 asked us to do, reserve our decisions on relevancy  
11 until the end of the case.

12 BRIGADIER QUILLIAM: May it please your  
13 Honor, we object to the admission of this document  
14 on the ground that it is irrelevant.

15 THE PRESIDENT: I understand you object to  
16 all of them, Brigadier. We have always understood  
17 that you object to all of these proclamations and  
18 orders by the President in relation to embargoes.

19 BRIGADIER QUILLIAM: That is the position,  
20 if your Honor pleases.

21 MR. LOGAN: On the question of relevancy,  
22 these documents show the economic warfare that was  
23 being conducted against Japan. They also show, in  
24 opposition to the prosecution's contention that Japan  
25 was building up a war machine, that these materials

1       which the witness Liebert said were necessary to build  
2       up a war machine were not being received by Japan  
3       because of these embargoes, and that the United States  
4       was the principal country from which Japan received  
5       such materials. In fact, the United States was the  
6       sole source of supply of many of them; so that in  
7       addition to the moral embargoes and the embargo which  
8       followed July 2, 1940, it is our contention that this  
9       testimony directly controverts that offered by the  
10      witness Liebert in so far as the inability of Japan  
11      to obtain the materials which he claimed were necessary  
12      to build up a war machine are concerned.

13               THE PRESIDENT: But Japan did build up a  
14      war machine and did attack, and therefore must have  
15      gotten materials. That seems to be irrelevant.

16               MR. LOGAN: Well, according to the Indict-  
17      ment, we are accused of conspiring to and actually  
18      preparing for aggressive warfare. Now, if as early  
19      as 1938 and 1939 and shortly after July 2, 1940, we  
20      were not getting the materials which they claim were  
21      necessary to build up a war machine, although there  
22      is considerable question as to the weight of that  
23      testimony of Liebert's, then we say these documents  
24      all show the extent of the embargoes and the vast  
25      variety of commodities -- not only war commodities

1 but civilian commodities -- which were affected by  
2 the embargoes.

3 THE PRESIDENT: They don't show quantities.  
4 They do show that war materials were prevented from  
5 leaving the United States for Japan. That is a  
6 common ground. But what more can you do?

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1           MR. LOGAN: Of course, they don't show quan-  
2 titles, your Honor, but they do show a total bar of  
3 exportation of these goods to Japan, which means  
4 that they did not get any at all.

5           THE PRESIDENT: That is common ground. The  
6 prosecution admit it.

7           MR. LOGAN: I would like to read for your  
8 Honor's consideration this statement which was made  
9 by Brigadier Quilliam, and tie that up with Liebert's  
10 testimony, that these materials were necessary to  
11 build up a war machine -- these very materials  
12 contained in these documents.

13           THE PRESIDENT: Well, I think it is suf-  
14 ficient to admit that America deprived you of all  
15 materials from the United States and that they did  
16 so because you were waging a war against China.

17           MR. LOGAN: The United States does not claim  
18 that, your Honor; they claim they were withholding  
19 the sending of these materials for reasons of the  
20 national defense of the United States.

21           THE PRESIDENT: Now, it was you that sug-  
22 gested that you wanted the arms for use against China.  
23 You could assign no other reason for getting them.

24           MR. LOGAN: There was a war going on with  
25 China at that time and we have admitted that part

1 of the importations received were being used for  
2 that purpose, but that a great part of it was being  
3 used for the economy of the Japanese people.

4 May I read this statement made by Brigadier  
5 Quilliam? Pages 8,183 and 8,184 of the record:

6 "It is, of course, well known that modern  
7 warfare requires the use of vast quantities of equip-  
8 ment of all kinds, and it is obvious that Japan's  
9 attack against Pearl Harbor, Malaya, and other places  
10 from December 1941 onwards must have been preceded  
11 by large scale industrial preparations. The evidence  
12 of Mr. Liebert will show the comprehensive nature of  
13 those preparations during the years prior to 1942,  
14 how they affected Japan's whole economy and every  
15 aspect of the life and activities of its people, and  
16 how they were directed to the object of achieving by  
17 the year 1941 not only the maximum production of the  
18 equipment and supplies necessary to enable her aggress-  
19 ive plans to be executed, but also the maximum poten-  
20 tial for future maximum production.

21  
22 THE PRESIDENT: I wouldn't read any more  
23 of it, Mr. Logan.

24 MR. LOGAN: I don't intend to. Bearing  
25 in mind that Liebert testified to the whole gamut  
of materials which he claimed necessary to build up

1 of the importations received were being used for  
2 that purpose, but that a great part of it was being  
3 used for the economy of the Japanese people.

4 May I read this statement made by Brigadier  
5 Quilliam? Pages 8,183 and 8,184 of the record:

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7 warfare requires the use of vast quantities of equip-  
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9 attack against Pearl Harbor, Malaya, and other places  
10 from December 1941 onwards must have been preceded  
11 by large scale industrial preparations. The evidence  
12 of Mr. Liebert will show the comprehensive nature of  
13 those preparations during the years prior to 1942,  
14 how they affected Japan's whole economy and every  
15 aspect of the life and activities of its people, and  
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18 equipment and supplies necessary to enable her aggress-  
19 ive plans to be executed, but also the maximum poten-  
20 tial for future maximum production.

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22 THE PRESIDENT: I wouldn't read any more  
23 of it, Mr. Logan.

24 MR. LOGAN: I don't intend to. Bearing  
25 in mind that Liebert testified to the whole gamut  
of materials which he claimed necessary to build up

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1 the war machine, this evidence which lists these  
2 very self-same items shows that Japan was not receiving  
3 from the United States at this time or prior thereto  
4 the very materials which prosecution claims was neces-  
5 sary to build up a war machine and the United States  
6 was the largest exporter of these materials to Japan,  
7 and in many instances the sole exporter. In addition  
8 to that it also, of course, goes, as I said, to the  
9 economic warfare and the defense of these accused that  
10 this economic strangulation of all these vital mater-  
11 ials not only for the war she was engaged in with  
12 China but also for civilian consumption which resulted  
13 in Japan's being driven as a last resort for her own  
14 self-preservation and self-defense to get involved  
15 in the Pacific war.

16 THE PRESIDENT: We know your contention; we  
17 know the contention of the prosecution. It is common  
18 ground that the League of Nations declared the war  
19 against China to be an aggressive war and thereby  
20 imposed obligations on the United States. We know the  
21 respective contentions very well, Mr. Logan. I could  
22 see no objection to your proving just what the embargo  
23 is against, but you are not satisfied to do that. You  
24 want to go on giving a lot of documents, wasting our  
25 time quite unnecessarily.

1 MR. LOGAN: I thought the suggestion I made  
2 would shorten it considerably.

3 THE PRESIDENT: The prosecution gave evidence  
4 of the embargo's existence. The only thing that has  
5 not been established is the exact nature of the--

6 MR. LOGAN: That is right.

7 THE PRESIDENT: --war materials that were  
8 not allowed to be exported to Japan.

9 MR. LOGAN: And civilian materials too.

10 THE PRESIDENT: It is common ground that  
11 the embargo was against everything that could be used  
12 in war but did include things that could be used for  
13 civilian purposes as well as for war purposes. If you  
14 are allowed to state just what these goods were --  
15 there is only a short category -- that would save a  
16 lot of trouble. It would save all this argument.  
17 The question of its relevancy is contested, of course.

18 MR. LOGAN: That is all I intend to read,  
19 your Honor; just the title of it, the date of it, and  
20 the subjects covered.

21 THE PRESIDENT: Brigadier Quilliam.

22 BRIGADIER QUILLIAM: May it please the Tribunal  
23 with reference to the question of relevancy, which I  
24 understand the Tribunal is going to deal with now, I  
25 desire to make one or two comments. The evidence of

1 Mr. Liebert in this respect has, I suggest, been  
2 totally misconstrued by Mr. Logan. His evidence paid  
3 full account to the difficulties of getting certain  
4 goods from America and other countries. May I remind  
5 the Tribunal that a great part of his evidence deals  
6 with the desperate efforts made by Japan to get those  
7 things in other ways? His evidence showed and other  
8 evidence has shown the efforts made to exploit other  
9 countries in order to get these goods. The suggestion  
10 that this kind of evidence answers anything of the  
11 evidence given by Mr. Liebert is quite unsound.

12 As regards the so-called economic strangula-  
13 tion aspect, we submit, as we have submitted previously,  
14 that what was done by the United States could afford  
15 no justification to Japan for starting a war. As I  
16 pointed out yesterday, the United States was obviously  
17 actuated by more than one motive, by several motives.

18 THE PRESIDENT: But she was not bound by  
19 the League of Nations covenant, of course. That  
20 declaration by the League may have imposed moral  
21 obligations on the United States under the Pact of  
22 Paris and certainly gave her rights.

23 BRIGADIER QUILLIAM: The point I wish to make,  
24 those obligations under the Pact of Paris extended not  
25 only to the East but to Europe. It is a complete

1 misstatement, we suggest, to say that all these  
2 embargoes were directed merely against Japan. The  
3 United States was properly concerned with the aggres-  
4 sion that was taking place in Europe. She was properly  
5 concerned with the threat to her own national security  
6 that all this aggression was bringing about. We  
7 therefore say that it is quite irrelevant to the issues  
8 in this case to point to what is called "economic  
9 strangulation" as justifying what my friend somewhat  
10 euphemistically called "becoming involved in the  
11 Pacific war."

12 THE PRESIDENT: You see the difficulty we  
13 are in today. We have a Court of eight. We are faced  
14 with a very major issue and we are inclined to be as  
15 liberal as possible for the time being in receiving  
16 evidence, subject to rejection later, of course. When  
17 we have a full bench it may be that they will not be  
18 inclined to act on some of the evidence we would  
19 otherwise receive here. We are inclined to receive  
20 this evidence you are tendering but we expect you to  
21 put it before us in the briefest form and we may delay  
22 our decision on it until we have a full bench which  
23 will be before the end of this month. We are dealing  
24 with the major issue of self-defense. Although a  
25 majority of us may have a certain view about the

1 relevancy of this evidence we feel that we should  
2 refrain from stating that view or giving effect to  
3 it until we are all here.

4 Could you proceed with some other matters  
5 and withhold this proclamation material to be heard  
6 before all the Judges?

7 MR. LOGAN: I have it all arranged chrono-  
8 logically, your Honor. I would like to present it  
9 that way.

10 THE PRESIDENT: We had better receive it  
11 subject to the objection of the prosecution but with-  
12 out giving our decision.

13 MR. LOGAN: All right. I shall read from  
14 exhibit 2801, proclamation signed by President Roose-  
15 velt, July 2, 1940. This is a proclamation prohibiting  
16 the export of certain articles and materials unless  
17 licenses are obtained.

18 THE PRESIDENT: It is understood that these  
19 documents are admitted tentatively only.

20 MR. LOGAN: Yes. (Reading):

21 "1. Arms, ammunition, and implements of war  
22 as defined in my Proclamation No. 2237, of May 1, 1937.

23 "2. The following basic materials and products  
24 containing the same:

25 "Aluminum, antimony, asbestos, chromium,

1 cotton linters, flax, graphite, hides, industrial  
2 diamonds, manganese, magnesium, Manila fiber, mercury,  
3 mica, molybdenum, optical glass, platinum group metals,  
4 quartz crystals, quinine, rubber, silk, tin, toluol,  
5 tungsten, vanadium, wool;" chemicals as listed in  
6 the document, and the following products:

7 "Aircraft parts, equipment, and accessories  
8 other than those listed in my proclamation of May 1,  
9 1937; armor plate, other than that listed in my  
10 proclamation of May 1, 1937; glass, nonshatterable or  
11 bullet proof; plastics, optically clear; optical  
12 elements for fire control instruments, aircraft  
13 instruments, etc."; and machine tools as set forth  
14 in the document.

15 I ask that document 1400-G-4 be given an  
16 exhibit number.

17 CLERK OF THE COURT: Defense document 1400-G-4  
18 will receive exhibit No. 2801-A.

19 (Whereupon, the document above  
20 referred to was marked defense exhibit  
21 No. 2801-A, and received in evidence.)  
22

23 MR. LOGAN: I shall summarize that  
24 document by saying that exhibit 2801-A shows that on  
25 July 2, 1940 the President signed House of Representa-  
tives bill and issued military order as Commander in

1 Chief designating Lieutenant Colonel Russell L.  
2 Maxwell, United States Army, as administrator of  
3 Export Control to administer the bill of July 2, 1940.

4 I ask that defense document 1400-H-4 be  
5 given an exhibit number.

6 CLERK OF THE COURT: Defense document  
7 1400-H-4 will receive exhibit No. 2801-B.

8 (Whereupon, the document above  
9 referred to was marked defense exhibit  
10 No. 2801-B and received in evidence.)

11 MR. LOGAN: Exhibit 2801-B is a proclamation  
12 signed by President Roosevelt July 26, 1940 and the  
13 following products were added to the embargo list:  
14 petroluem products, tetraethyl lead, iron and steel  
15 scrap.

16 I ask that defense document 1400-I-4 be  
17 given an exhibit number.

18 CLERK OF THE COURT: Defense document  
19 1400-I-4 will receive exhibit No. 2801-C.

20 (Whereupon, the document above  
21 referred to was marked defense exhibit  
22 No. 2801-C and received in evidence.)

23 MR. LOGAN: Exhibit 2801-C is a regulation  
24 signed by President Franklin D. Roosevelt July 26,  
25 1940 wherein he defines in greater detail petroleum

1 products, tetraethyl lead, and the iron and steel  
2 scrap as set forth in his proclamation of July 26,  
3 1940.

4 We now offer in evidence defense document  
5 401-B-5, corrected, being an excerpt from "Peace and  
6 War." This document shows that Ambassador HORINOCHI  
7 vigorously protested that the Export Control Act of  
8 July 2, 1940, under which licenses were refused beginning  
9 in August 1940, was considered an unfriendly act by  
10 Japan.

11 THE PRESIDENT: Brigadier Quilliam.

12 BRIGADIER QUILLIAM: May it please the  
13 Tribunal, I am not clear whether the Tribunal pro-  
14 poses to treat a document like this in the same way  
15 as the other documents that have just been put in.  
16 In our submission it is irrelevant.

17 THE PRESIDENT: We are dealing only with the  
18 President's proclamations and orders. This is not one.  
19 I think we will have to give our decision on this as  
20 we have previously. We have dealt with these "Peace  
21 and War" things.

22 BRIGADIER QUILLIAM: In addition to this  
23 being irrelevant we suggest that this is immaterial,  
24 but as it appears to us this must stand or fall with  
25 those other documents.

1 THE PRESIDENT: This is not on the same  
2 level as a Presidential act or proclamation. We  
3 are not reserving our decision on all documents  
4 bearing on this particular issue of defense; that is  
5 not our intention.

6 BRIGADIER QUILLIAM: I did not mean, your  
7 Honor, to suggest that it was on the level of a  
8 proclamation. What I meant was that relevancy of this  
9 document is challenged on the same grounds as the  
10 proclamations. If the proclamations--

11 THE PRESIDENT: I think that probably we  
12 will decide now on whether this particular document  
13 should be admitted or rejected. We will not reserve  
14 that for the consideration of the other three; but  
15 didn't we have a similar document yesterday?

16 BRIGADIER QUILLIAM: My attention is directed,  
17 your Honor, to defense document 401 (42) which was  
18 rejected yesterday afternoon.

19 THE PRESIDENT: How do you distinguish,  
20 Mr. Logan?

21 MR. LOGAN: I had not realized, your Honor;  
22 I think both of these refer to the same protest. The  
23 other one is a much longer document but refers to the  
24 same thing so I guess the ruling of the Court yesterday  
25 will apply to this document.

1 THE PRESIDENT: What do you do, Mr. Logan?

2 MR. LOGAN: I suggest that this one should  
3 be admitted, your Honor, on the ground that here is  
4 a direct protest by the Japanese ambassador to the  
5 very actions that the United States was taking. I  
6 think it all goes to the fact that Japan was -- it  
7 shows the expression by a representative, duly repre-  
8 sentative authority, of Japan that they vigorously  
9 protested the actions that were being taken by the  
10 United States at that time. I think it all goes  
11 to our defense. It must be remembered that Japan's  
12 action taken in many instances was based on the  
13 reaction to the actions that were taken by other  
14 A, B, C, and D powers.

15 THE PRESIDENT: I cannot recall the exact  
16 terms of the document rejected yesterday; however, we  
17 will adjourn until half-past one.

18 (Whereupon, at 1205, a recess was  
19 taken.)  
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## AFTERNOON SESSION

1  
2 The Tribunal met, pursuant to recess, at  
3 1330.

4  
5 MARSHAL OF THE COURT: The International  
6 Military Tribunal for the Far East is now resumed.

7 THE PRESIDENT: Mr. Logan.

8 MR. LOGAN: I don't want the Tribunal to  
9 be under a misapprehension. That last document  
10 we offered is part of defense document 401-42,  
11 which was previously rejected.

12 THE PRESIDENT: The objection is upheld  
13 and the document rejected.

14 MR. LOGAN: We have a witness from yester-  
15 day's section. I would like to call him now,  
16 UEMURA, Kogaro, defense document 1924.

17 - - -

18 K O G O R O U E M U R A, called as a witness on  
19 behalf of the defense, being first duly sworn,  
20 testified through Japanese interpreters as  
21 follows:

## DIRECT EXAMINATION

22  
23 BY MR. LOGAN:

24 Q Will you give the Tribunal your full name  
25 and address?

1       A   My name is UEMURA, Kogoro. My address,  
2 Tokyo City, Shibuya Ku, Sendagaya, 3 Chome 496.

3       Q   Will you examine defense document 1924 and  
4 the errata sheet attached thereto, and tell us if  
5 that is your affidavit?

6       A   Yes, it is my affidavit.

7       Q   Are the statements contained therein accurate  
8 and true?

9       A   Yes, it is accurate.

10       MR. LOGAN: I offer in evidence defense docu-  
11 ment 1924 and the errata sheet attached to it.

12       THE PRESIDENT: Admitted on the usual terms.

13       CLERK OF THE COURT: Defense document 1924  
14 will receive exhibit No. 2802.

15       (Whereupon, the document above re-  
16 ferred to was marked defense exhibit No. 2802  
17 and received in evidence.)

18       MR. LOGAN: I shall now read exhibit 2802,  
19 affidavit of UEMURA, Kogoro.

20       "I, UEMURA, Kogoro, immediately after being  
21 graduated from the Law College of the Imperial Uni-  
22 versity in 1918, entered the service of the Commerce  
23 Bureau of the Agriculture and Commerce Ministry, and  
24 successively filled the posts of factory supervisor,  
25 commissioner of the Patent Bureau and private

1 secretary of the Minister of Agriculture and Commerce.

2 "In 1925, when the Commerce and Industry  
3 Ministry was separated from the Agriculture and  
4 Commerce Ministry, I was attached to the Engineer-  
5 ing Bureau, and concurrently held the posts of com-  
6 missioner and secretary of Commerce and Industry.

7 "In 1925 I went abroad to Europe and  
8 America to investigate the industrial conditions  
9 there and returned in 1926.

10 "In 1927, when the Bureau of National  
11 Resources was established in the Cabinet, I was  
12 attached thereto and occupied the post of Chief of  
13 the Research and Investigation Section. Later, I was  
14 promoted to Chief of the General Affairs Section, and  
15 then to Chief of the Executive Department.

16 "In October, 1937, when the Planning Board  
17 was created, I was appointed Chief of the Research  
18 and Investigation Department, and in July, 1938, became  
19 the Chief of the Industry Department. In 1939, when  
20 the structure of the Planning Board was reformed, I  
21 became the Chief of the 4th Section of the Planning  
22 Board with industrial affairs in its charge. In  
23 January, 1940, I became the Vice-Director of the  
24

1 Planning Board, and resigned on August 13, 1940.

2 "Circumstances connected with the Establish-  
3 ment of the Planning Board. It was made clear by  
4 various inquiries and reports that, in view of the  
5 experiences in World War I, every European and  
6 American country is striving after the war towards  
7 research and investigation of industrial and the  
8 general mobilizations. In our country, too, the  
9 Munitions Bureau was established in the Cabinet a  
10 year after I entered the government service, that is,  
11 in 1919, under the jurisdiction of which were placed  
12 the enforcement of the Munitions Industry Mobiliza-  
13 tion Law enacted in 1916, and other affairs concern-  
14 ing the preparation for the general mobilization in  
15 industry, communication, etc. Later on, this bureau  
16 was merged with the Statistics Bureau of the Cabinet  
17 to form the Census Bureau. But later on this, too,  
18 was abolished and the affairs in its charge were  
19 allocated to various ministries.

21 "In 1927, it was deemed necessary to conduct  
22 fundamental investigations of not only the munitions  
23 mobilization, but also the promotion of general in-  
24 dustries and national wealth, and formulate plans  
25 based on this. Therefore, for the planning of con-  
trolled application of the resources in general and

1 conducting investigations, the National Resources  
2 Bureau was established and put under the jurisdic-  
3 tion of the local Minister. The business of the  
4 National Resources Bureau was divided into three  
5 groups:

6       "(1) to conduct investigations necessary  
7 for the control of national resources;

8       "(2) To frame plans for the controlled  
9 application of national resources and preparation of  
10 control laws, etc. relative thereto;

11       "(3) matters concerning a domestic es-  
12 tablishment relative to the above, for instance,  
13 measures for complementing the shortage of national  
14 resources.

15       "The meaning of the last-mentioned 'matters  
16 concerning a domestic establishment' was to frame  
17 some specific plans which were deemed necessary for  
18 an increase of the national strength, and refer them  
19 to the ministry concerned, recommending their materiali-  
20 zation.

21       "However, as the National Resources Bureau  
22 was a minor bureau attached to the Cabinet without  
23 any specific authority over any ministry, the ministry  
24 would not do anything more than merely listen to the  
25 plan for its information in case such was referred

1 thereto by the Bureau.

2 "Thus, nothing could be accomplished in this  
3 line except a partial standardization of industrial  
4 technical terms then used in Japan. On the other  
5 hand, the investigations of the national resources  
6 made gradual progress after passage of the National  
7 Resources Investigation Law in 1929. About the plan  
8 for the control of national resources, the repre-  
9 sentatives of the Army, Navy, and other departments  
10 concerned met in a conference, and the plan including  
11 the rough estimate of the wartime demand submitted by  
12 the Army and Navy Departments has been drafted since  
13 1929 or so, but it was nothing more than an extremely  
14 rough, so-called desk plan.

15 "After 1931, as the international situation  
16 gradually worsened, the remarkable economic depression  
17 in Japan centered in the rural communities broke out  
18 and consequently the social and political insecurities  
19 became aggravated during the Cabinets of WAKATSUKI,  
20 INUKAI, SAITO, and OKADA. As a result the government  
21 deeply felt it necessary that the Cabinet should have a  
22 department or bureau directly attached to it to in-  
23 vestigate thoroughly the important national policies,  
24 and at the same time to promote the said national  
25 policies by unifying the opinions of each department,

1 so that the government might cope with or overcome  
2 such situations.

3 "For this purpose the Cabinet Investigation  
4 Bureau was established. This was in May, 1935, that  
5 is, during the OKADA Cabinet. After this Investiga-  
6 tion Bureau was set up, matters concerning the  
7 political and economic measures which the National  
8 Resources Bureau was unable to carry out came in  
9 essence under the jurisdiction of this Bureau.  
10 However, this Investigation Bureau was reformed into  
11 the Planning Bureau in May, 1937.

12 "As soon as the North China Incident broke  
13 out in July, 1937, the general public felt uneasy  
14 about the prospect, and the tendency to import cotton,  
15 etc. in speculation became more and more conspicuous.  
16 If this matter were to be left to take its own course  
17 there might arise a remarkable deficit in the ex-  
18 change fund which had been in deficit heretofore, and  
19 the maintenance of exchange rate might become diffi-  
20 cult. Fear increased. Therefore, the Finance De-  
21 partment established a commission and subcommissions  
22 for each respective item to regulate the import and  
23 made them regulate the imports upon drafting the  
24 import plan. But, contrary to the expectations, the  
25 incident expanded more and more, and the government

1 keenly felt the necessity of establishing synthetic  
2 plans and measures throughout all departments, in  
3 order to cope with this situation. A proposal to  
4 establish a larger scale office by merging the  
5 existing Planning Bureau and the National Resources  
6 Bureau was brought forward. In so far as the  
7 executive officials of the then National Resources  
8 Bureau were concerned, they simply considered that  
9 by simply increasing the personnel of the bureau  
10 the needs would be met. However, the two offices  
11 were merged in accordance with the government's  
12 views and in October, 1937, the Planning Board was  
13 established.

14 "Functions of the Planning Board. The  
15 powers of the Planning Board were essentially the  
16 same as those of the National Resources Bureau and  
17 Planning Bureau combined for the reason that the  
18 Planning Board was instituted by the merger of those  
19 two offices as stated above. Its major powers were  
20 to plan out the matters concerning the development  
21 and application of the synthetic national strength as  
22 the premier's staff; to investigate any reports that  
23 the premier would tender and all matters that were  
24 presented by each ministry; to state opinions at  
25 cabinet conferences upon such reports and matters;

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1 and to regulate and unify all the affairs of each  
2 ministry in regard to certain matters. However, the  
3 Planning Board was to the end the premier's staff,  
4 and it had no authority to give orders to the various  
5 ministers or to enforce anything. Furthermore, it  
6 had also no function whatsoever to execute such.  
7 The national policies were all decided at cabinet  
8 conferences and, consequently, every ministry brought  
9 it in operation according to its jurisdiction.  
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1 "The Plan for Expanding the Production  
2 Potential.

3 "The establishment of the plan for expanding  
4 the production potential was another important task  
5 assigned to the Planning Board among the matters  
6 concerning commodities. This plan for expanding the  
7 production potential was taken up later than that for  
8 the mobilization of materials. At that time, the  
9 need of military expansion was strongly advocated as  
10 an unavoidable measure to cope with the prolongation  
11 and extension of the China Incident, and the aggrava-  
12 tion of the international situation. Primarily, how-  
13 ever, the development of our basic industries was  
14 markedly lagging behind the world powers', so the  
15 necessity of all-out development of national resources,  
16 by means of expansion of the basic industries, was  
17 acutely felt by all.

18 "It was July of the 13th year of Showa (1938)  
19 when I was made the Chief of the Industrial Section  
20 that I first occupied myself with the plan for  
21 expanding of the production potential. At that time  
22 the draft of each industry placed under each planning  
23 scheme was almost completed. These drafts had been  
24 under study since the time of the Planning Bureau and I  
25 was told that the Industrial Section was continuing

1 these studies. When I took the post of the Chief of  
2 the Industrial Section I found that the five-year  
3 plan for Manchukuo had already been begun in the 12th  
4 year (1937).

5 "As it was considered necessary to set up a  
6 year plan in Japan, too, we at last came to establish  
7 the plan based upon the synthetic readjustment of the  
8 drafts already compiled. At first we modeled ours  
9 also along the lines of a five-year plan. But as we  
10 had to draft a collective plan in coordination with  
11 that of Manchukuo and in order to make both terminal  
12 periods correspond so that we could start our second  
13 plan together with Manchukuo, we had in our case to  
14 adopt a four-year plan. On the other hand, this  
15 point was most appropriate in view of the rapidly  
16 changing economic conditions of the time.

17 "It was in January of the 14th year of  
18 Showa (1939) that the cabinet positively decided on  
19 the matter, so that only three months remained of  
20 the 13th fiscal year. Accordingly the plan became  
21 substantially three-year one. Not everything was to  
22 be embraced by the plan, of course. It was intended  
23 as stated before, to establish a second plan after  
24 the expiration of the first."

25 We will skip a sentence.

1           "The duty of the Planning Board was to adjust  
2 the demands of the Army and Navy Departments, as well  
3 as those of other departments. Candidly speaking,  
4 the primary reason why the Planning Board established  
5 the plan for the expansion of the productive potential  
6 was to aspire to a well-balanced development of the  
7 industries of our country. So the Planning Board has  
8 always endeavored its utmost to secure the materials  
9 allocated for the expansion of productive potential.  
10 However, on account of increasing demand for war  
11 materials caused by the extension of China Incident,  
12 the allocations of the materials for the expansion of  
13 capacity productive potential were not carried out as  
14 expected by the Planning Board. So the plan for the  
15 expansion of the productive potential did not progress  
16 as it was planned.

17           "For what we call the fixed year for planning,  
18 the fiscal year is adopted as a matter of course, in  
19 view of its relation to the budget and the yearly  
20 material mobilization plan, etc. Therefore, the  
21 last year of the four-year plan of the productive  
22 potentials for the expansion commenced in the month  
23 of April, of the 16th year of Showa (1941) and  
24 finished on the last day of March of the 17th year  
25 of Showa (1942). I should think that this plan was

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18 the fiscal year is adopted as a matter of course, in  
19 view of its relation to the budget and the yearly  
20 material mobilization plan, etc. Therefore, the  
21 last year of the four-year plan of the productive  
22 potentials for the expansion commenced in the month  
23 of April, of the 16th year of Showa (1941) and  
24 finished on the last day of March of the 17th year  
25 of Showa (1942). I should think that this plan was

1 adequately studied at the Army Department. But I  
2 have no notion at all of the existence of a five-year  
3 plan for manufacture of the war materials of the War  
4 Ministry dated June 23, 1937 (the 12th year of Showa),  
5 nor that of a five-year plan for the important indus-  
6 tries, dated May 29, of the same year, both of which  
7 are now being brought in issue at the Tokyo Military  
8 Tribunal for the Far East.

9 "The National Mobilization Law.

10 "One of the important items with which the  
11 Planning Board was concerned was the National Mobili-  
12 zation Law. The National Mobilization Law was  
13 prescribed at a cabinet council meeting on 9 November  
14 1937, after the outbreak of the China Incident, was  
15 approved by the 73rd Session, and was brought into  
16 force on and after 5 May 1938.

17 "Mr. TAKI, Masao, President of the Planning  
18 Board at that time, was ordered by the Prime Minister,  
19 KONOE, after the decision of the cabinet meeting  
20 regarding its establishment, to the effect that the  
21 Planning Board should devise the National Mobilization  
22 Law cooperating with other departments, and take charge  
23 of its drafting after frequent negotiations with the  
24 other departments concerned. The bill thus drafted  
25 was further approved formally by the cabinet council

1 meeting, and was presented to the Diet under the joint  
2 signatures of each minister, according to my recollection.

3 "As a law regarding the general mobilization  
4 at the time, the Ammunition Industries Mobilization Law  
5 passed in 1918 was still valid. It included the  
6 provisions applicable to a considerably wide scope  
7 to the mining industry and to communications. Thus,  
8 in order to correspond with the development of the  
9 China Incident, this Ammunition Industries Mobilization  
10 Law was applied for the time being, under Law No. 88,  
11 dated 10 September 1937, and there was further estab-  
12 lished an Imperial decree, based upon the same law,  
13 which is called the Industry and Business Control  
14 Ordinance, on 25 September to control some munition  
15 workds. Besides, in the 73rd session of the Imperial  
16 Diet at that time, a great number of extraordinary  
17 measures was enacted and put into effect, such as  
18 remedial ones for the future change of conditions  
19 anticipated with the occurrence of the China Incident.  
20 The China Incident, however, expanded more and more  
21 until it was clearly indicated that it would be  
22 prolonged. International relations too became so  
23 serious as to bring about an unforeseen state of  
24 affairs. In order to take complete action to cope  
25 with such a situation, the Ammunition Industries

1 Mobilization Law enacted some 20 years previously  
2 and the separate temporary measures were by no means  
3 sufficient. Besides, Japan was backward in preparation  
4 for national mobilization as compared with other  
5 countries. So, it was decided to enact speedily the  
6 National Mobilization Law.

7 "Available at that time were the laws and  
8 regulations of European and American countries during  
9 the time of World War I, such as Britain's uniform  
10 National Defence Law, and subsequent legislation,  
11 such as Italy's and Czechoslovakia's National  
12 Mobilization Law, and the U. S. National Mobilization  
13 Law Bill (Bill 5,539, introduced by the Lower House  
14 in the 74th Session of Congress, in 1935, and then  
15 under the consideration of the Upper House) to which  
16 we referred for our drafting of the Mobilization Law.  
17 I remember that Czechoslovakia's Mobilization Law and  
18 also the U. S. Mobilization Law Bill were so perfect  
19 as to furnish us with much information.  
20

21 "The National Mobilization Law of Japan thus  
22 enacted went into effect in May 1938, and the Munitions  
23 Industry Mobilization Law was abolished at the same  
24 time.

25 "Later on, in conformity to this National  
Mobilization Law were issued a number of Imperial

1 Ordinances which were proposed and executed by each  
2 of the competent ministries, but the Planning Board,  
3 as previously stated, has absolutely no authority to  
4 execute the policies of the government."

5 Signed, "UEMURA, Kogoro."

6 You may examine.

7 THE PRESIDENT: Mr. Williams.

8 MR. G. WILLIAMS: If the Tribunal please,  
9 I have a couple of additional questions on direct  
10 examination.

11 THE PRESIDENT: On behalf of--

12 MR. G. WILLIAMS: On behalf of the defendant  
13 HOSHINO, sir.

14 DIRECT EXAMINATION (Continued)

15 BY MR. G. WILLIAMS:

16 Q Witness, you testified that the President  
17 of the Planning Board acted as part of the Premier's  
18 staff. Would you further elaborate briefly on the  
19 relation between the Premier and the President of the  
20 Planning Board?  
21

22 A The President of the Planning Board is a  
23 subordinate officer to the Premier. This is speci-  
24 fically stated in the official organization law. The  
25 President of the Planning Board is under the juris-  
diction of the Premier. Furthermore, under the

1 official organization law, the Planning Board was  
2 entitled to express its views or opinions with regard  
3 to the various comprehensive plans set up by the  
4 various individual ministries and also to express its  
5 views in these matters which were brought up before  
6 cabinet meetings, and similarly it was permitted to  
7 express views with regard to matters pertaining to  
8 the budget which had connection with such matters. But  
9 at all times the Planning Board was obligated to speak  
10 or express its views through the Premier and not  
11 directly.

12 Q Why did you resign from the Planning Board in  
13 August of 1940?

14 A The reason that I resigned was that Mr.  
15 HOSHINO, who was the President of the Planning Board  
16 at that time, had expressed his wish that henceforth  
17 the Planning Board must be operated under a close  
18 collaboration between the military, the officials, and  
19 the civilians, together. Accordingly, he felt that the  
20 vice director of such a board should be selected from  
21 an influential person from business circles, not from  
22 official circles. Therefore, I resigned.

23 Q Who replaced you, Mr. UEMURA?

24 A Mr. OBATA, Tadayoshi, from the SUMITOMO firm.

25 MR. G. WILLIAMS: You may cross-examine.

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THE PRESIDENT: Brigadier Quilliam.

BRIGADIER QUILLIAM: May it please the Tribunal, there will be no cross-examination.

MR. LOGAN: May the witness be released on the usual terms?

THE PRESIDENT: He is released accordingly.

(Whereupon, the witness was excused.)

- - - -

1 THE PRESIDENT: Brigadier Quilliam.  
2 BRIGADIER QUILLIAM: May it please the  
3 Tribunal, there will be no cross-examination.  
4 MR. LOGAN: May the witness be released on  
5 the usual terms?  
6 THE PRESIDENT: He is released accordingly.  
7 (Whereupon, the witness was  
8 excused.)  
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1 MR. LOGAN: Defense document 1400-J-4  
2 is offered in evidence. This is a protest dated August  
3 3, 1940 issued by the Japanese Embassy to the Depart-  
4 ment of State against the virtual embargo of July 2,  
5 1940.

6 THE PRESIDENT: Brigadier Quilliam.

7 BRIGADIER QUILLIAM: May it please the  
8 Tribunal, we submit that this document is covered  
9 by the ruling with respect to the last document  
10 offered in this section which was rejected.

11 THE PRESIDENT: Mr. Logan.

12 MR. LOGAN: In view of subsequent events,  
13 your Honor, I think it is incumbent upon the defense  
14 to show that they took exception to these actions of  
15 the United States, that Japan took exception to those  
16 actions and that they certainly did not acquiesce  
17 in them.

18 I only wish to read the last 2 paragraphs,  
19 your Honor.

20 THE PRESIDENT: Mr. Logan, can you answer  
21 whether Germany was included among the nations to  
22 whom gasoline could be sent?

23 MR. LOGAN: I believe that was barred at the  
24 same time, your Honor, but I would have to look back  
25 at my documents to ascertain that definitely.

1 Brigadier Quilliam says that it is quite  
2 clear. Brigadier Quilliam says that it is so,  
3 Germany was barred.

4 THE PRESIDENT: By a majority the Court  
5 upholds the objection and rejects the document.

6 MR. LOGAN: I shall omit the next document,  
7 which was an answer to the previous protest.

8 We offer in evidence defense document 1874,  
9 being an extract from a telegram dated September 12,  
10 1940 from Ambassador Grew to Secretary Hull.

11 THE PRESIDENT: Mr. Comyns Carr.

12 MR. COMYNS CARR: If it please the Tribunal,  
13 the prosecution objects to this document which is  
14 nothing from beginning to end except the opinion  
15 entertained by Mr. Grew at that time.

16 MR. LOGAN: If the Tribunal please, this  
17 is an official document, an extract of a telegram sent  
18 by Ambassador Grew to Secretary of State. It is  
19 an official announcement of the Ambassador to his  
20 superior. It certainly is entitled to be admitted  
21 in this case in view of the many, many telegrams  
22 which were introduced by the prosecution of similar  
23 nature. It is a warning of which I think the defense  
24 should be entitled to introduce in this case.

25 MR. COMYNS CARR: Your Honor, no telegrams

1 of a similar nature were introduced by the prosecution.  
2 Telegrams passing between Japanese Ambassadors  
3 and Ministers were no doubt introduced even if they  
4 did contain opinion, but as between United States or  
5 Allied Ambassadors and their Ministers only by way  
6 of proof of facts.

7 MR. LOGAN: If the Tribunal please --

8 MR. COMYNS CARR: One minute, I haven't  
9 finished.

10 MR. LOGAN: It is my understanding that once  
11 the prosecution made an objection they wouldn't have  
12 two chances to come back again.

13 MR. COMYNS CARR: It comes rather oddly from  
14 my friend who has argued the same point over and  
15 over again on almost every objection, but in this  
16 case, I submit, I am particularly entitled to inter-  
17 vene to correct a misstatement of fact.

18 MR. LOGAN: There is no misstatement.

19 THE PRESIDENT: We said yesterday we wouldn't  
20 allow Washington officials to form our opinions as  
21 to what the Japanese were likely to do as the result  
22 of the embargo. This is exactly the same, is it not?

23 MR. LOGAN: This is proof of fact that the  
24 United States was warned as to the probable consequences.

25 THE PRESIDENT: That was everybody's guess.

1 Everybody was entitled to one. The most particular  
2 virtue attached to his.

3 MR. LOGAN: The virtue attached to it,  
4 your Honor, is that Ambassador Grew is on the spot  
5 here, and knew what was going on and that it was  
6 part of his duties to convey his impressions and  
7 interpretations of the affairs that were taking place  
8 in Japan at that time and convey them to his Govern-  
9 ment.

10 THE PRESIDENT: By a majority the Court  
11 upholds the objection and rejects the document.

12 MR. LOGAN: We offer in evidence defense  
13 document 1400-L-4.

14 THE PRESIDENT: Admitted on the usual terms.

15 CLERK OF THE COURT: Defense document  
16 1400-L-4 will received exhibit No. 2803.

17 (Whereupon, the document above  
18 referred to was marked defense exhibit  
19 No. 2803 and received in evidence.)

20 THE PRESIDENT: This is to be admitted  
21 tentatively in view of what we said this morning.

22 MR. LOGAN: This proclamation was signed  
23 by President Roosevelt September 12, 1940. The list  
24 of commodities included in the embargo was as follows:

25 "1. Equipment which can be used, or adopted

1 to use, for the production of aviation motor fuel  
2 from petroleum, petroleum products, hydrocarbons, or  
3 hydrocarbon mixtures, by processes involving chemical  
4 change.

5 "Equipment which can be used, or adopted  
6 to use, for the production of tetraethyl lead; and  
7 any plans useful in the design, construction, or  
8 operation of any such equipment, or in connection  
9 with any such processes.

10 "Plans, specifications, and other documents  
11 containing descriptive or technical information  
12 setting forth the design or construction of aircraft  
13 or aircraft engines."

14 Defense document 1400-M-4 which is a press  
15 release issued by the Federal Loan Agency September  
16 25, 1940 is offered in evidence. This release  
17 demonstrates the economic assistance which was  
18 granted to China by the United States at a time when  
19 China and Japan were engaged in hostilities.  
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1 THE PRESIDENT: Brigadier Quilliam.

2 BRIGADIER QUILLIAM: If it please the Tri-  
3 bunal, we contend that this document comes within the  
4 principle of the documents, which have been rejected,  
5 dealing with the embargo. We claim that it is ir-  
6 relevant to the issues in this case to bring in evi-  
7 dence relating to assistance given to China by  
8 America.

9 THE PRESIDENT: Any argument on this, Mr.  
10 Logan?

11 MR. LOGAN: Well, I think it is almost self-  
12 evident that this should be admitted. It certainly  
13 is very material to the defense that it is economic,  
14 and this borders somewhat on the military sentiment  
15 of Japan. It is certainly material to show the  
16 actions of other nations, assistance rendered to  
17 China, which at that time was engaged in a war with  
18 Japan, especially when that aid was rendered by a  
19 neutral nation to one of two belligerents. Such  
20 actions would certainly tend toward the Japanese re-  
21 garding it as a provocation of war.

22 THE PRESIDENT: By a majority, the Court  
23 upholds the objection and rejects the document.

24 MR. LOGAN: We now offer defense document  
25 1400-N-4. This is a proclamation issued by the White

1 THE PRESIDENT: Brigadier Quilliam.

2 BRIGADIER QUILLIAM: If it please the Tri-  
3 bunal, we contend that this document comes within the  
4 principle of the documents, which have been rejected,  
5 dealing with the embargo. We claim that it is ir-  
6 relevant to the issues in this case to bring in evi-  
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8 America.

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18 Japan, especially when that aid was rendered by a  
19 neutral nation to one of two belligerents. Such  
20 actions would certainly tend toward the Japanese re-  
21 garding it as a provocation of war.

22 THE PRESIDENT: By a majority, the Court  
23 upholds the objection and rejects the document.

24 MR. LOGAN: We now offer defense document  
25 1400-N-4. This is a proclamation issued by the White

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1 House, September 25, 1940.

2 THE PRESIDENT: Tentatively admitted.

3 CLERK OF THE COURT: Defense document 1400-N-4  
4 will receive exhibit No. 2804.

5 (Whereupon, the document above  
6 referred to was marked defense exhibit  
7 No. 2804 and received in evidence.)

8 MR. LOGAN: This is exhibit 2804 and refers  
9 to the control, effective October 15, 1940, of the  
10 exportation of iron and steel scrap, the exportation  
11 of No. 1 heavy melting steel scrap, and all grades  
12 of iron and steel scrap. It also shows that effective  
13 October 16, 1940, "licenses will be issued to  
14 permit shipments to the countries of the Western  
15 Hemisphere and Great Britain only."

16 We now offer defense document 1400-O-4.

17 THE PRESIDENT: Tentatively admitted.

18 CLERK OF THE COURT: Defense document 1400-O-4  
19 will receive exhibit No. 2805.

20 (Whereupon, the document above  
21 referred to was marked defense exhibit  
22 No. 2805 and received in evidence.)

23 MR. LOGAN: This is a regulation signed by  
24 President Roosevelt on September 30, 1940, defining  
25 the use of the term "iron and steel scrap" as

1 contained in the regulation of July 26, 1940, to  
2 mean "all iron and steel scrap of every kind and  
3 description, classified or unclassified."

4 We now offer in evidence defense document  
5 1400-P-4. On October 7, 1940, the Japanese Embassy  
6 wrote to the Department of State complaining about  
7 the regulation dated September 30, 1940, prohibit-  
8 ing the exportation of iron and steel scrap, con-  
9 testing the American position that the measure was  
10 motivated in the interest of national defense and  
11 further stating that the regulations must be re-  
12 garded as an unfriendly act.

13 THE PRESIDENT: Brigadier Quilliam.

14 BRIGADIER QUILLIAM: If it please the Tri-  
15 bunal, Mr. Logan's explanation has shown the Tribunal  
16 that this is merely another protest against the United  
17 States exportation regulation, and we submit it should  
18 be rejected on the same grounds as caused the rejection  
19 of the other documents.  
20

21 MR. LOGAN: I might say, if the Tribunal  
22 please, that it seems to the defense that a protest  
23 such as this is clearly admissible, not only on the  
24 grounds of the affirmative defense that a war was  
25 conducted in self defense, but it is also closely  
allied and connected with the diplomatic negotiations,

1 and it also --

2 THE PRESIDENT: It is admitted that you did  
3 not accept these embargoes without protest. That  
4 appears in the negotiations. There is ample evi-  
5 dence of that. That is all you need. Even if  
6 relevant and material, it is surplusage, it is  
7 accumulative.

8 MR. LOGAN: I don't recall any other evi-  
9 dence in the case at the present time, your Honor,  
10 where it was brought to the United States' attention  
11 of the Japanese regarding the imposition of these  
12 embargoes as an unfriendly action.

13 THE PRESIDENT: By a majority, the Court  
14 upholds the objection and rejects the document.

15 MR. LOGAN: On October 8, 1940, the Japanese  
16 Ambassador handed an undated note to the Secretary of  
17 State wherein he pointed out that the regulation of  
18 September 30, 1940, restricting the granting of  
19 licenses for shipment of iron and steel scrap for  
20 exportation to the Western Hemisphere and Great  
21 Britain was causing a widespread depression in Japan,  
22 that it was motivated by a desire to bring pressure  
23 on Japan and expressing fear that it would be a fore-  
24 runner to severance of economic relations between  
25 Japan and the United States, and that future relations

1 between those two countries would be unpredictable.  
2 This message is set forth in defense document 1400-Q-4  
3 which is offered in evidence.

4 THE PRESIDENT: Brigadier Quilliam.

5 BRIGADIER QUILLIAM: May it please the Tri-  
6 bunal, this document is almost precisely the same as  
7 the document which has just been rejected. It deals  
8 with the same subject matter, the same article. I  
9 regret that I was unable to intervene earlier because  
10 I could not see what Mr. Logan was doing, what docu-  
11 ment he was reading.

12 MR. LOGAN: They are entirely two different  
13 documents, your Honor. The first one is a letter  
14 that was sent, and this is entirely different. It  
15 is an undated statement which was handed at the same  
16 time the previous document was given to the Secretary  
17 of State.

18 THE PRESIDENT: Another protest or something  
19 of the kind. By a majority, the objection is upheld  
20 and the document rejected.

21 MR. LOGAN: As evidence of further tightening  
22 of the economic pressure of Japan, we offer a press re-  
23 lease issued by the White House on October 15, 1940,  
24 defense document 1400-R-4.

25 THE PRESIDENT: Brigadier Quilliam.

1           BRIGADIER QUILLIAM: May it please the Tri-  
2 bunal, this is a reply to protests about the expor-  
3 tation regulations, and we submit, therefore, that  
4 it must fall under the principle laid down by the  
5 Tribunal. We ask for its rejection.

6           MR. LOGAN: I don't know whether I under-  
7 stood the Brigadier correctly. This is not a reply  
8 to the protests, as I see it.  
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BRIGADIER QUILLIAM: No, I regret, your Honor, it is not a reply. It is the same kind of thing as we have been dealing with before, namely, the export regulations.

THE PRESIDENT: Well, should it be admitted tentatively, Brigadier? That is what I want to know.

BRIGADIER QUILLIAM: If it please the Tribunal, this is not a proclamation.

THE PRESIDENT: No, it isn't.

BRIGADIER QUILLIAM: And the next document to be submitted, which is the one I confused it with, is the reply to -- is a protest about this.

THE PRESIDENT: We admitted a press release some minutes ago, where it really contains some presidential act. It should go in tentatively.

MR. LOGAN: This will be difficult to summarize, if the Tribunal please. I think it would be easier to read it. We have a translation of it.

THE CLERK: Defense Document 1400-R-4 will receive Exhibit No. 2806.

(Whereupon Defense Document 1400-R-4 was marked Exhibit No. 2806 and admitted in evidence.)

MR. LOGAN: (reading) "Press Release

1 Issued by the White House on October 15, 1940.

2 "The President on October 10 approved an  
3 act which confers on him authority to requisition  
4 arms, ammunition, implements of war, machine tools,  
5 and other articles and materials which are needed  
6 for the national defense.

7 "Under the Neutrality Acts of 1935, 1936,  
8 1937, and 1939, and under the Export Control Act of  
9 July 2, 1940, certain articles and materials needed  
10 for the national defense have been subject to the  
11 export-licensing system. Since the passage of the  
12 last-named act, many applications for licenses have  
13 been refused as a result of decisions by the Admin-  
14 istrator of Export Control that the proposed export-  
15 ation would be contrary to the interests of the  
16 national defense. The articles or materials for  
17 which export licenses have been refused have in  
18 many cases already been sold and the title has  
19 passed to a foreign purchaser. It has been found  
20 that, in some of these cases, purchasers did not de-  
21 sire to sell the article or material in the United  
22 States or, because they were acting in a represent-  
23 ative capacity, they were not legally in a position  
24 to do so. This situation has been particularly acute  
25 in the case of some exportations of machine tools.

1 A great many of these tools for which export licenses  
2 have been refused are especially needed to meet  
3 national-defense requirements.

4 "The President on October 15 issued an Exec-  
5 utive order directing the Secretary of War and the  
6 Secretary of the Navy, acting jointly through the  
7 agency of the Army and Navy Munitions Board, to de-  
8 termine the necessity for the requisitioning of any  
9 equipment, munitions, or machinery tools, materials,  
10 or supplies necessary for the manufacture of munitions,  
11 or the servicing, or operation of facilities for the  
12 national defense, and to determine whether in any  
13 case it is in the public interest to sell, or other-  
14 wise dispose of, any of the articles and materials  
15 so requisitioned. The administration of the other  
16 provisions of the act has been vested in the Admin-  
17 istrator of Export Control.

18 "The President at the same time issued the  
19 necessary regulations for the carrying out of his  
20 Executive order.

21 "As a result of his approval of this act  
22 and the issuance of this Executive order and these  
23 regulations, the President is assured the use of  
24 the critical articles and materials required in  
25 the national-defense program which might otherwise

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1 be unobtainable."  
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1           On October 23, 1940, the Department of  
2 State answered the note of October 7, 1940, from the  
3 Japanese Embassy, setting forth the reliance on  
4 national defense as the reason for the restrictions  
5 on the export of iron and steel scrap. This is  
6 defense document 1400-S-4, which is now offered in  
7 evidence.

8           THE PRESIDENT: Brigadier Quilliam.

9           BRIGADIER QUILLIAM: May it please the Tribu-  
10 nal, this is the reply to defense document 1400-P-4  
11 which was rejected a moment or two ago, and we submit  
12 this should be rejected also.

13           THE PRESIDENT: Obviously this must be rejec-  
14 ted.

15           MR. LOGAN: On November 19, 1940, the Assis-  
16 tant Secretary of State issued a memorandum setting  
17 forth the principal points raised by the Japanese  
18 Charge d'Affaires in an interview had with him. These  
19 are set forth in defense document 1400-T-4, which is  
20 now offered in evidence.

21           THE PRESIDENT: Brigadier Quilliam.

22           BRIGADIER QUILLIAM: May it please the Tribu-  
23 nal, this is another protest about the export regula-  
24 tions, and we submit is covered by the previous rul-  
25 ing. We ask for its rejection.

1 THE PRESIDENT: This is covered by the pre-  
2 vious ruling, Mr. Logan.

3 MR. LOGAN: Except, your Honor, you must  
4 remember that the time these protests were made the  
5 Treaty of Commerce and Navigation was still in force  
6 and effect and the six-month period had not yet ex-  
7 pired, and that treaty contained a most-favored na-  
8 tion clause.

9 THE PRESIDENT: Is that treaty in evidence?

10 MR. LOGAN: Yes, your Honor.

11 THE PRESIDENT: If we know the treaty we know  
12 what America did. We don't need this. It is rejec-  
13 ted.

14 MR. LOGAN: On November 30, 1940, the Assis-  
15 tant Secretary of State issued another memorandum  
16 setting forth conversation between him and the Japan-  
17 ese Charge d'Affaires with respect to certain exports.  
18 This memorandum is defense document 1400-U-4, which  
19 is now offered in evidence.

20 THE PRESIDENT: Brigadier Quilliam.

21 BRIGADIER QUILLIAM: May it please the  
22 Tribunal, this is another protest about the export  
23 regulations, and we submit is covered by the previous  
24 ruling. We ask its rejection.

25 THE PRESIDENT: The objection is upheld and

1 the document rejected.

2 MR. LOGAN: Defense document 1400-V-4 is  
3 offered in evidence. This is a memorandum of the  
4 Secretary of State to the Japanese Charge d'affaires  
5 dated December 9, 1940, setting forth the United States  
6 Government position with respect to the issuance of  
7 export licenses for machine tools.

8 THE PRESIDENT: Brigadier Quilliam.

9 BRIGADIER QUILLIAM: May it please the Tribu-  
10 nal, this is the reply of the Secretary of State to  
11 the protest that has just been rejected. We ask that  
12 this document be rejected also.

13 MR. LOGAN: I think the Tribunal should be  
14 informed of the views of both governments in regard  
15 to this exportation license problem.

16 THE PRESIDENT: By a majority the objection  
17 is upheld and the document rejected.

18 MR. LOGAN: I refer to defense document 1400-  
19 W-4 and offer it in evidence. It is another execu-  
20 tive order, your Honor.

21 THE PRESIDENT: Admitted tentatively.

22 CLERK OF THE COURT: Defense document 1400-W-4  
23 will receive exhibit number 2807.

24 (Whereupon, the document above referred  
25 to was marked defense exhibit 2807 and received

1 in evidence.)

2 MR. LOGAN: This is an executive order  
3 signed by President Roosevelt on December 10, 1940,  
4 defining the terms "iron" and "steel" as used in the  
5 previous order.

6 THE PRESIDENT: There is no need to read it.

7 MR. LOGAN: I just want to read the heading.

8 "A. Iron ore.

9 "B. Pig iron

10 "C. Ferro Alloys.

11 "D. Semi-Finished Products

12 "E. Finished Products."

13 That is all.

14 I now offer in evidence defense document  
15 1500-M-5, which is an excerpt from the testimony of  
16 Joseph C. Grew before the Congressional Investigating  
17 Committee on November 27, 1945, wherein he recited a  
18 letter he wrote to the President of the United States  
19 on December 14, 1940.

20 THE PRESIDENT: Mr. Comyns Carr.

21 MR. COMYNS CARR: May it please the Tribunal,  
22 this again is a piece of Mr. Grew's opinion, and amus-  
23 ing as it may be it is, in our submission, irrelevant.

24 MR. LOGAN: Maybe I have a warped sense of  
25 humor, if the Tribunal please, but I don't see any humor  
about it. It is a letter written by the Ambassador  
to the highest-ranking official in the United States.

1 It bears directly on the so-called question of con-  
2 spiracy where he advises the President that in the  
3 Japanese Government the right hand doesn't know what  
4 the left hand is doing.

5 The Tribunal probably will recall that as  
6 far as presentation of views and opinions are concerned,  
7 the views of the German ambassador were accepted by  
8 this Tribunal, and his opinions were taken and accep-  
9 ted for whatever probative value they may have. But  
10 here is a warning, or at least, a letter written  
11 direct to the President of the United States by Ambassa-  
12 dor Grew. What higher authority could we seek for?

13 THE PRESIDENT: But what is there in this to  
14 suggest that the accused in the dock were not cooperat-  
15 ing? It is purely a neutral thing.

16 The objection is upheld and the document re-  
17 jected.

18 MR. LOGAN: I might briefly answer your last  
19 question, your Honor. This refers to the bickerings  
20 that were going on, the controversies that were going  
21 on within the government itself, and some of these  
22 accused were in the government at that time. It cer-  
23 tainly does not show any conspiracy among them if they  
24 are bickering all the time, and it was recognized by  
25

1 the United States Government that that was so by  
2 an authority right here in Japan who knew it was  
3 going on.

4 THE PRESIDENT: We will recess for fifteen  
5 minutes.

6 (Whereupon, at 1445, a recess was  
7 taken until 1500, after which the proceedings  
8 were resumed as follows:)  
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1 MARSHAL OF THE COURT: The International  
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Mr. Logan.

4 MR. LOGAN: A memorandum from the Secretary  
5 of State to the Japanese Charge d'Affaires is set  
6 forth in defense document 1400-X-4 which is offered  
7 in evidence. This memorandum further explains the  
8 situation with respect to machine tools.

9 THE PRESIDENT: Brigadier Quilliam.

10 BRIGADIER QUILLIAM: May it please the Tri-  
11 bunal, this is a further reply to the protest made  
12 in defense document 1400-U-4 which was rejected  
13 shortly before the recess. We submit this document  
14 is covered by that ruling.

15 MR. LOGAN: If the Tribunal please, I don't  
16 want to appear pugnacious about this, but it seems  
17 to me that all this evidence of the protests that  
18 were made by the Japanese Government about these em-  
19 bargoed are material because, if I remember correctly,  
20 in Mr. Keenan's opening statement, in defining aggres-  
21 sive war he said it was an unprovoked attack. So,  
22 I am trying to present evidence here to show what the  
23 provocation was and the protests that were made by  
24 the Japanese Government against these various meas-  
25 ures that were taken, whether or not that was suffi-

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8 situation with respect to machine tools.

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25 ures that were taken, whether or not that was suffi-

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16 want to appear pugnacious about this, but it seems  
17 to me that all this evidence of the protests that  
18 were made by the Japanese Government about these em-  
19 bargoos are material because, if I remember correctly,  
20 in Mr. Keenan's opening statement, in defining aggres-  
21 sive war he said it was an unprovoked attack. So,  
22 I am trying to present evidence here to show what the  
23 provocation was and the protests that were made by  
24 the Japanese Government against these various meas-  
25 ures that were taken, whether or not that was suffi-

1       cient to provoke them into an attack. Furthermore,  
2       this evidence is being presented to the Tribunal so  
3       that it can decide whether or not the determination  
4       by Japan, which it had the right to do under the  
5       Kellogg-Briand Pact, to determine whether it was a  
6       war of self defense -- whether or not they were ac-  
7       tually justified in these provocations which were  
8       presented against them.

9               THE PRESIDENT: Do you contest what I said,  
10       that it is common ground that the Japanese protested  
11       against what the Americans did?

12              MR. LOGAN: But it goes a little further than  
13       that, your Honor. If it was just one little incident  
14       and one protest, perhaps that would not be sufficient  
15       to justify a finding that there was provocation.  
16       But where you have many acts of the United States,  
17       imposing different embargoes on different goods and  
18       many protests and many warnings by the Japanese Govern-  
19       ment as to how they considered these embargoes, that  
20       all goes to the weight, and it is for the Court to  
21       determine whether or not their attack was justifiable.

22              While we all know in a general way that pro-  
23       tests were made, there is no evidence before the Tri-  
24       bunal as to the number of protests that were made and  
25       the extent of them and the effect that the embargoes

1 were having on the Japanese Government and the fact  
2 that the Japanese officials told the Americans just  
3 what that effect was. And I also wish to point out  
4 that the documents I have been offering are not the  
5 Japanese side alone; I have been offering the pro-  
6 tests that were made and the replies that were made  
7 by the American Government so that the Tribunal can  
8 get the full picture of this.

9 THE PRESIDENT: I suppose the prosecution  
10 are prepared to admit that you protested against all  
11 these embargoes and that you purported to point out  
12 what effect it would have on you, but they wouldn't  
13 admit the relevance of it, naturally. Self defense  
14 must be established objectively, not subjectively.  
15 You telling them what you proposed to do is not  
16 relevant.

17 MR. LOGAN: It goes further than that, your  
18 Honor. We are telling them the effect of these em-  
19 bargoes. Of course, the prosecution wouldn't agree  
20 to its relevance, but I think that it is relevant and  
21 that the Tribunal should so decide. It might also be  
22 pointed out that these documents clearly show that  
23 the United States knew just what the effect of these  
24 embargoes was going to be on the country of Japan  
25 which was not a self-sufficient nation, which depended

1 largely on the United States for its livelihood.

2 Yet, notwithstanding that knowledge, not-  
3 withstanding the protests that were made month  
4 after month, they added more and more commodities  
5 to the list on the embargo which they knew would  
6 finally squeeze Japan into a position where she would  
7 have to do something about it. That is the picture  
8 we are trying to show.

9 THE PRESIDENT: By a majority, the Court  
10 upholds the objection and rejects the document.

11 MR. LOGAN: I now offer in evidence defense  
12 document 1400-Y-4.

13 THE PRESIDENT: Admitted tentatively.

14 CLERK OF THE COURT: Defense document  
15 1400-Y-4 will receive exhibit No. 2808.

16 (Whereupon, the document above re-  
17 ferred to was marked defense exhibit No.  
18 2808 and received in evidence.)

19 MR. LOGAN: This is a proclamation issued  
20 by President Roosevelt on December 20, 1940, and  
21 the following commodities were added to the embargo  
22 list: Bromine, ethylene, ethylene dibromide, methyl-  
23 amine, strontium metals and ores, cobalt, abrasives  
24 and abrasive products containing emery, corundum, as  
25 well as abrasive paper and cloth, plastic molding

1 machines and presses, measuring machines, gauges,  
2 testing machines, balancing machines, hydraulic pumps,  
3 tools incorporating industrial diamonds, equipment and  
4 plans for the production of aviation lubricating oil.

5 On December 21, 1940 the Japanese Embassy  
6 delivered a memorandum to the Department of State  
7 bitterly complaining about the discriminatory treat-  
8 ment respecting licensing for export of certain mater-  
9 ials. This is contained in defense document 1400-Z-4  
10 which is now offered in evidence.

11 THE PRESIDENT: Brigadier Quilliam.

12 BRIGADIER QUILLIAM: May it please the Tri-  
13 bunal, this is a further protest about the export  
14 regulations that the United States was imposing and  
15 falls within the decisions already given.

16 MR. LOGAN: I have nothing further to add to  
17 what I said about the other documents, your Honor.

18 THE PRESIDENT: The objection is upheld and  
19 the document rejected.

20 MR. LOGAN: I now call as a witness MIZUNO,  
21 Itaro.

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23  
24  
25

1 I T A R O M I Z U N O, called as a witness on be-  
2 half of the defense, being first duly sworn,  
3 testified through Japanese interpreters as  
4 follows:

5 DIRECT EXAMINATION

6 BY MR. LOGAN:

7 Q Will you let us have your full name and  
8 address.

9 A My address is Tokyo, Nakano-Ku, Saginomiya,  
10 1-chome, 21; my name, MIZUNO, Itaro.

11 Q Will you examine defense document 1918 and  
12 all the exhibits attached to it and tell us if that  
13 is your affidavit.

14 (Whereupon, papers were handed to  
15 the witness.)

16 A There is no question; this is my affidavit.

17 Q Are the statements contained therein accur-  
18 ate and true?

19 A I believe the contents are true and accurate.

20 MR. LOGAN: I offer in evidence defense docu-  
21 ment 1918 and all the appendices attached thereto;  
22 I believe there are about twenty-one documents.

23 THE PRESIDENT: Mr. Comyns Carr.

24 MR. COMYNS CARR: May it please the Tribunal,  
25 the prosecution objects to this entire consignment of

1 documents as wholly irrelevant from the first word  
2 to the last. Of the twenty-one appendices, four or  
3 five have not yet been served at all, and none were  
4 served within the time limited by the rules. But,  
5 I am in a position to deal with the objection be-  
6 cause the nature of them appears from the affidavit  
7 itself.

8 THE PRESIDENT: It reads like a judgment on  
9 issues we have for trial.

10 MR. COMYNS CARR: Well, your Honor, it is a  
11 judgment on certain issues but, in my submission, not  
12 those which the Tribunal has to try. It is concerned  
13 entirely with the economic history of the world dur-  
14 ing the period of the two wars.

15 Part one, which deals with the whole of the  
16 twenty-one appendices, is headed, on page 3, "The  
17 Economic Conditions After the World War I." It be-  
18 gins by citing, as an appendix, extracts from the  
19 League of Nations World Economic Survey for 1931 to  
20 1932. Then it deals with the Monetary and Economic  
21 Conference of 1933 with regard to which the Tribunal  
22 yesterday rejected a document on the ground that  
23 that was not a relevant topic.

24 Then it deals at immense length with the  
25 abandonment of the gold standard by various countries

1 one after the other, another subject which the Tri-  
2 bunal declared to be irrelevant.

3 Then Part two is headed, "Barriers in Inter-  
4 national Trade set up by Various Countries." And it  
5 deals with increase of import duties in Great Brit-  
6 ain and with the Ottawa Conference and agreements  
7 made thereunder which the Tribunal rejected yester-  
8 day. Then it deals with economic conditions in  
9 France in a paragraph of the affidavit and an appen-  
10 dix, including various tariff and quota regulations.

11 Then there are similar paragraphs and  
12 appendices dealing with tariff and such like regula-  
13 tions in Germany, Holland, the United States of  
14 America, Canada, China, India, and the Dutch East  
15 Indies, mostly, if not entirely, in years down to  
16 1936.

17 Then there is a Part three headed, "The  
18 Efforts of Japan In Order to Alleviate Economic  
19 Pressure" which, however, makes it clear that the  
20 economic pressure referred to is the general in-  
21 crease of tariffs and such like previously dealt with  
22 and not any particular measures alleged to have been  
23 directed against Japan for political purposes.

24 Finally, on the bottom of page 22, it be-  
25 gins for the first time to refer to matters arising

1 out of the war in China, such as the United States'  
2 moral embargo. And, on page 23, there is a brief  
3 reference to trading difficulties after the outbreak  
4 of the European War arising from the ordinary contra-  
5 band rules.

6 Finally, it makes brief reference to, but  
7 conveys no information about, negotiations with the  
8 Dutch East Indies in 1940 and negotiations with the  
9 United States of America in 1941.

10 In our submission, there is not one word  
11 in this affidavit or in any one of the appendices  
12 which could possibly be of any assistance to this  
13 Tribunal in deciding this case.  
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THE PRESIDENT: Mr. Logan.

1 MR. LOGAN: I am sure after listening to Mr.  
2 Carr that the Tribunal must be convinced that all these  
3 matters he has mentioned are in issue before this Tri-  
4 bunal and all practically referred to by Mr. Liebert  
5 in his testimony. Furthermore when we presented what  
6 we thought were well-recognized books on this situation  
7 the prosecution objected and thought we should produce  
8 a witness. Here he is. I am referring particularly  
9 to rejection of Fahs' book. A large number of exhibits  
10 conforms to the requirements of the prosecution and the  
11 rulings of the Tribunal that whenever a report is re-  
12 ferred to it should be attached to the affidavit. They  
13 are all there. The counteracts that were taken by  
14 Japan as mentioned in this affidavit are those which  
15 we are charged with having perpetrated for aggressive  
16 purposes. I have no intention of reading all the ap-  
17 pendices and exhibits attached to the affidavit. There  
18 are three or four perhaps I wish to read small parts  
19 from in addition to the affidavit of the witness.  
20

21 THE PRESIDENT: You are entitled to answer  
22 Liebert fully and this man may be qualified to do so,  
23 but is that the nature of his evidence?

24 MR. LOGAN: I think it is, your Honor, when  
25 we consider the forty-five laws which Liebert went into

1 and tried to have the Tribunal draw an inference  
2 that they were passed for the purpose of promoting  
3 and waging an aggressive war.

4 THE PRESIDENT: We refused to take any of  
5 Liebert's opinions. We cannot take any of this man's  
6 opinions. His affidavit and annexures appear to be  
7 full of opinions. I think there are observations made  
8 by him as a result of the official positions that he  
9 held, but I was glad to hear Mr. Carr say that the  
10 judgments or opinions contained in this affidavit are  
11 on issues the Tribunal does not have to try and I  
12 think that is a proper interpretation of the Tribunal's  
13 ruling. I thoroughly agree that no witness should  
14 try to forswear any issue which the Tribunal has to  
15 decide but opinions on matters within the sphere of  
16 work done by this man which are reasonable and necessary  
17 I think the Tribunal should accept.

18 THE PRESIDENT: After all, the only way to  
19 meet Liebert's evidence is to contradict the facts  
20 relied upon by him.

21 MR. LOGAN: I might also add, your Honor,  
22 that we of the defense do not consider Liebert's  
23 testimony as the touchstone by which the relevancy of  
24 all evidence that we put in should be gauged.

25 THE PRESIDENT: All you have to do as the

1 defense is to contradict the prosecution's evidence  
2 by other evidence.

3 MR. LOGAN: When we assume the burden of  
4 trying to prove an affirmative defense we also assume  
5 the burden of proof of evidence to support it which  
6 does not necessarily have to be touched by Liebert.

7 THE PRESIDENT: You just meet the evidence  
8 for the prosecution; that is all.

9 MR. LOGAN: And we have the burden to go  
10 forward on an affirmative defense.

11 THE PRESIDENT: Mr. Carr.

12 MR. COMYNS CARR: Your Honor, may I correct  
13 a misapprehension? As far as we can trace there is  
14 nothing whatever in this affidavit which has any  
15 bearing at all upon any of the allegations made by  
16 Mr. Liebert.

17 THE PRESIDENT: He is the only prosecution's  
18 witness that dealt with this phase, as far as I  
19 recollect. We are reluctant to reject an affidavit  
20 prepared at such great length and with such great  
21 labor but it must be relevant.

22 MR. LOGAN: Perhaps the Tribunal does not  
23 understand what I have been trying to explain with  
24 regard to--  
25

THE PRESIDENT: I know you are talking about

1 defense. I know it is an affirmative defense.

2 MR. LOGAN: Yes, the extent and presentation  
3 of evidence in support of it goes beyond the evidence  
4 the prosecution has presented.

5 THE PRESIDENT: I understand from my col-  
6 leagues that this does not meet Liebert's evidence in  
7 any way.

8 MR. LOGAN: It is much broader than Liebert's  
9 testimony, if the Tribunal please. It is greater in  
10 scope and it gives the Tribunal a better understanding  
11 of the economic picture in Japan.

12 THE PRESIDENT: By a majority the Court  
13 upholds the objection and rejects the document.

14 MR. LOGAN: May the witness be excused on  
15 the usual terms?

16 THE PRESIDENT: He is excused accordingly.

17 (Whereupon, the witness was excused.)

18 MR. LOGAN: Defense document 206-E-54 being  
19 an excerpt from the diary of former Ambassador Grew  
20 entitled "Ten Years in Japan" dated January 1, 1941  
21 is now offered in evidence. This sets forth his  
22 observations with respect to American embargoes.

23 THE PRESIDENT: Mr. Comyns Carr.

24 MR. COMYNS CARR: May it please the Tribunal,  
25 this is another of Mr. Grew's opinions and is objected

1 to for the same reasons as before.

2 THE PRESIDENT: The objection is upheld and  
3 the document rejected by a majority.

4 MR. LOGAN: The Department of State of the  
5 United States issued a memorandum dated January 7,  
6 1941 to the Japanese Embassy as set forth in defense  
7 document 1400-A-5 now offered in evidence. It answers  
8 the Japanese Embassy's protest of December 21, 1940  
9 by referring the Embassy to the State Department notes  
10 of August 9, 1940 and October 23, 1940 heretofore  
11 offered in evidence.

12 MR. COMYNS CARR: May it please the Tribunal,  
13 this is a reply to the rejected document 1400-Z-4  
14 particularly and we submit should fall with that document.

15 THE PRESIDENT: The objection is upheld and  
16 the document rejected.

17 MR. LOGAN: Notwithstanding the last mentioned  
18 protest of the Japanese -- perhaps I should not say  
19 that because it was rejected. I am sorry. We offer  
20 in evidence defense document 1400-B-5.

21 THE PRESIDENT: Admitted tentatively.

22 CLERK OF THE COURT: Defense document  
23 1400-B-5 will receive exhibit No. 2809.

24 (Whereupon, the document above  
25 referred to was marked defense exhibit

No. 2809 and received in evidence.)

MR. LOGAN: This is an executive order signed by President Roosevelt, January 10, 1941, adding the following commodities to the embargo: (1) Copper, (2) Brass and Bronze, (3) Zinc, (4) Nickel, (5) Potash. There is also contained in this document a large list of various items being the construction of the materials just mentioned which I shall not read.

On February 4, 1941 additional regulations governing the exportation of articles and materials were imposed by executive order 8668 as set forth in defense document 1400-C-5 which is now offered in evidence.

THE PRESIDENT: Admitted tentatively.

CLERK OF THE COURT: Defense document 1400-C-5 will receive exhibit No. 2810.

(Whereupon, the document above referred to was marked defense exhibit No. 2810 and received in evidence.)

1 MR. LOGAN: The second executive order of  
2 President Roosevelt, dated February 4, 1941, defining  
3 and construing the materials as set forth in the  
4 proclamation of February 4, 1941, adds:

- 5 "(1) Oil and refining machinery  
6 Petroleum and gas well equipment and parts  
7 including well drilling machinery and  
8 parts  
9 Petroleum refining machinery, equipment  
10 and parts  
11 (2) Radium  
12 Metal  
13 Salts and compounds  
14 (3) Uranium  
15 Metal  
16 Salts and compounds  
17 Minerals  
18 (4) Calf and kip skins  
19 Calf skins  
20 Kip skins"

21 Defense document 1400-D-5, on the basis of  
22 strengthening the national defense, executive order  
23 8669 was issued on February 4, 1941, prescribing  
24 additional regulations covering the exportation of  
25 a large number of iron and steel materials. These  
are set forth in defense document 1400-D-5 which is  
now offered in evidence.

THE PRESIDENT: Admitted tentatively.

CLERK OF THE COURT: Defense document 1400-  
D-5 will receive exhibit No. 2811.

(Whereupon, the document above  
referred to was given exhibit No. 2811  
and admitted in evidence.)

1 MR. LOGAN: Defense exhibit 2811 is an  
2 executive order signed by President Roosevelt,  
3 February 4, 1941, setting forth additional regula-  
4 tions covering exportation of iron and steel to  
5 include the following forms, conversions and  
6 derivatives. I shall only read the heading of each  
7 one of these and not go into detail.

8 (Reading) "Iron Ore, Iron and Steel  
9 Semimanufactures, Tin-plate scrap, Tin-plate circles,  
10 etc., Waste-Waste tin plate, Terneplate waste-waste,  
11 clippings, and scrap, Iron and Steel Products, Iron  
12 and Steel Bars and Rods."

13 On February 25, 1941, another executive  
14 order was issued covering additional regulations  
15 respecting the exportation of certain articles set  
16 forth in defense document 1400-E-5, now offered in  
17 evidence.

18 CLERK OF THE COURT: Defense document  
19 1400-E-5 will receive exhibit No. 2812.

20 (Whereupon, the document above  
21 referred to was given defense Exhibit  
22 No. 2812 and admitted in evidence.)

23 MR. LOGAN: Executive order signed by  
24 President Roosevelt February 25, 1941. The fol-  
25 lowing articles and materials -- this order

1 defines the materials to include various types of  
2 commodities: Belladonna, Atropine, Sole Leather,  
3 Belting Leather.

4 On the same day, February 25, 1941, another  
5 executive order was issued, prescribing additional  
6 regulations covering exportation of certain articles  
7 as set forth in defense document 1400-F-5, now  
8 offered in evidence.

9 THE PRESIDENT: Admitted tentatively.

10 CLERK OF THE COURT: Defense document  
11 1400-F-5 will receive exhibit No. 2813.

12 (Whereupon, the document above  
13 referred to was given defense exhibit No.  
14 2813 and admitted into evidence.)

15 MR. LOGAN: Executive order signed by  
16 President Roosevelt, February 25, 1941, stating  
17 that the articles and materials set forth in his  
18 proclamation of the same date shall be construed  
19 to include: "Beryllium, Ores and concentrates  
20 (except gem varieties), Metal, alloys and scrap,  
21 Beryllium salts and compounds; Graphite electrodes;  
22 Aircraft Pilot Trainers, Trainers for ground  
23 instruction of pilots, student pilots, and combat  
24 crews for aircraft in instrumental flying, naviga-  
25 tion, bombing, or gunnery."

1 Further restrictions were imposed by  
2 executive order signed March 4, 1941, as set forth  
3 in defense document 1400-G-5, now offered in  
4 evidence.

5 THE PRESIDENT: Admitted tentatively.

6 CLERK OF THE COURT: Defense document  
7 1400-G-5 will receive exhibit No. 2814.

8 (Whereupon, the document above  
9 referred to was given defense Exhibit No.  
10 2814 and admitted in evidence.)

11 MR. LOGAN: Exhibit 2814 is executive  
12 order signed by President Roosevelt, March 4, 1941,  
13 in which he construes the articles and materials  
14 as named in the proclamation issued on the same date:  
15 "Cadmium, Ores and concentrates, Metal, Alloys,  
16 Cadmium Salts and Compounds; Carbon Black;  
17 Coconut Oil: Edible, Inedible; Copra; Cresylic  
18 Acid and Cresols; Fatty Acids produced from vege-  
19 table oils under export control; Glycerin; Palm-  
20 Kernel Oil; Pine Oil; Petroleum Coke; Shellac, Lac,  
21 crude, seed, button, and stick; Titanium, Ores  
22 and concentrates."

23  
24 THE PRESIDENT: We will adjourn until nine-thirty  
25 o'clock tomorrow morning.

(Whereupon, at 1600, an adjournment

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was taken until Friday, 8 August 1947  
at 0930.)

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